

# Transportation/Public Works

## Final Agenda

### Louisville Metro Council

**Meeting Date:** 02/28/2006

**Meeting Time:** 4:00 PM

**Location:** Third Floor, City Hall

**Chairs:** Tom Owen (8)

**Members:** Tom Owen (8)  
Ron Weston (13)  
Robert Henderson (14)  
George Melton (15)  
Hal Heiner (19)  
Stuart Benson (20)  
Robin Engel (22)

#### Special Items for Discussion:

- 1 [O-1-01-06](#) AN ORDINANCE CREATING A NEW CHAPTER, 164, WITHIN LOUISVILLE METRO CODE OF ORDINANCES (LMCO) TITLE XV, TO BE TITLED "SYSTEM DEVELOPMENT CHARGES FOR ROADWAYS." (TABLED)  
[Sponsor\(s\)](#) [Transportation/Public Works](#)
- 2 [O-150-8-05](#) AN ORDINANCE AMENDING AND RE-ENACTING CHAPTER 95 OF THE LOUISVILLE METRO CODE OF ORDINANCES RELATING TO HAZARDOUS MATERIALS (AS AMENDED). (Tabled)  
[Sponsor\(s\)](#) [Transportation/Public Works](#)
- 3 [R-247-11-05](#) A RESOLUTION RENAMING THE SOUTH LOUISVILLE GOVERNMENT CENTER BUILDING IN HONOR OF WILLIAM H. "BILL" WILSON. (tabled)  
[Sponsor\(s\)](#) [Transportation/Public Works](#)

- 4    [R-246-11-05](#)    A RESOLUTION URGING THE KENTUCKY PUBLIC SERVICE COMMISSION TO RE-EVALUATE LOUISVILLE GAS AND ELECTRIC COMPANY'S (LG&E) REQUEST FOR A NATURAL GAS RATE INCREASE, AND DECLARING THE ENACTMENT OF THIS RESOLUTION AN EMERGENCY. (Tabled)

[Sponsor\(s\)](#)

[Transportation/Public Works](#)

**Ordinance No. \_\_\_\_\_, Series 2006**

**AN ORDINANCE CREATING A NEW CHAPTER, 164,  
WITHIN LOUISVILLE METRO CODE OF ORDINANCES  
(LMCO) TITLE XV, TO BE TITLED “SYSTEM  
DEVELOPMENT CHARGES FOR ROADWAYS.”**

**Sponsored by: Council Member Robin Engel**

**BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE  
LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT [THE COUNCIL] AS  
FOLLOWS:**

**SECTION I.** That a new chapter within Title XV of the Louisville Metro Code of Ordinances be created, and shall read as follows:

**SYSTEM DEVELOPMENT CHARGES FOR ROADWAYS**

Section 164.01      Title

This Chapter shall be known as “System Development Charges for Roadways.”

Section 164.02      Legislative Purpose and Intent

(A) Both population and employment within the Louisville and Jefferson County metropolitan area are growing and creating demands for new residential and nonresidential development. New development creates additional demand and need for public streets and roads.

(B) The protection of the health, safety and general welfare of the citizens of Louisville Metro requires that the public streets and roads be improved to meet the demands for these facilities.

(C) The report titled "System Development Charges for Roadways Report," by Gresham, Smith & Partners, sets forth reasonable methodologies and analyses to determine the impacts of various types of residential development on the public streets and roads, and to determine the cost to improve the public streets and roads through System Development Charges.

(D) There is both a rational nexus and a rough proportionality between the development impacts created by each type of development covered by this Ordinance and the Transportation Systems Development Charges that such development will be required to pay.

(E) This Ordinance creates a system by which System Development Charges for Roadways will be used to expand or improve the public streets and roads, so that the payor will receive a corresponding benefit within a reasonable period of time after the charge is paid.

(F) The intent of this Ordinance is to ensure that adequate public streets and roads are available to serve growth and development in Louisville Metro, so that growth and development bear their proportionate share of the cost of improvements to these facilities.

(G) The intent of this Ordinance is to create a partnership between the private sector and the public sector for the improvement of public roadways. It is expressly acknowledged that it is not the intent of this Ordinance to collect any money in excess of the actual amount necessary to offset demands generated by a new development.

#### Section 164.10 Rules of Construction, Severability

(A) For the purposes of administration and enforcement of this Ordinance, unless otherwise stated in this Chapter, the following rules of construction shall apply:

(1) In case of any difference in meaning or implication between the text of this Ordinance and any caption, illustration, summary table or illustrative table, the text shall control.

(2) The word “shall” is always mandatory and not discretionary. The word “may” is always permissive.

(3) Words used in the present tense shall include the future tense, and words used in the singular number shall include the plural number, and vice versa, unless the context clearly indicates the contrary.

(4) The word “party” indicates an individual, a corporation, a partnership, an incorporated association, or any other entity.

(5) Unless the context clearly indicates to the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the

conjunction “and,” “or,” or “either...or,” the conjunction shall be interpreted as follows:

(a) “And” indicates that all the connected terms, conditions, provisions or events shall apply.

(b) “Or” indicates that the connected items, conditions, provisions or events may apply singly or in any combination.

(c) “Either...or” indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.

(6) The word “includes” shall not limit a term to the specific example, but is intended to extend its meaning to all other instances or circumstances of like kind or character.

(7) Where a road right-of-way is used to define Transportation Benefit District boundaries, that portion of the boundary road demarcating the Transportation Benefit District boundary may be considered as part of either, or both, Transportation Benefit Districts it bounds. Funds from either or both Transportation Benefit Districts that are defined by a common boundary road may be used to make improvements to that boundary road.

(8) If any one phrase, clause, sentence, provision, paragraph, section or part of this Ordinance shall judicially be declared to be invalid or unconstitutional, the remaining phrases, clauses, sentences, provisions, paragraphs, sections or parts thereof shall not be affected, but shall remain in full force and effect.

**ACCESSORY USE / STRUCTURE.** A use or structure which is clearly incidental to, customarily found in association with, and serves a principal use; is subordinate in purpose, area, or extent to the principal use served; and is located on the same building site as the principal use. This term shall be deemed to include accessory service uses, accessory private garages, home occupations, accessory tennis courts, accessory parking facilities, ground-mounted satellite dish antennas and solar energy systems which have the purpose of providing energy for heating and cooling of the principal use.

**ADDITION.** An extension or increase in floor area or height of a building or structure.

**ADMINISTRATIVE FEES.** The costs of implementing or maintaining the System Development Charges Program, including salaries for any employees dedicated to the program, the costs of purchasing, running, maintaining and upgrading software needed to carry out the program, and any other expenses associated with the implementation or maintenance of the Program.

**ALTERATION.** Any construction or renovation to an existing structure other than repair or addition.

**BUILDING.** Any permanent structure designed or built for the support, shelter or protection of persons, animals, chattel or property of any kind. This term includes mobile homes, but does not include awnings, canopies or similar structures. In this Ordinance, references to buildings include structures.

CONTRIBUTION OF LAND, MONEY, OR SERVICES. Contributions, payments, construction or dedications to Louisville Metro that are part of a class of capital facilities normally necessary to accomplish roadway improvements, excluding site-related improvements, which may be used to offset the required System Development Charge.

DESIGNATED ROAD. Based on development demands, system deficiencies and road capacity, roads in need of improvements to serve existing and reasonably foreseeable future development, that may not meet the standards for roadway widths set forth in Chapter 94, and that have been selected for such improvements by the System Development Charges Oversight Committee.

DEVELOPMENT. The performance of any man-made change to improved or unimproved real estate, including, but not limited to, building or mining, dredging, filling, grading, paving, excavating, or drilling operations; the permanent storage of materials and equipment; the making of any material change in the use or appearance of any structure or land; the division of land into two or more parcels; any construction of improvements or clearing or the alteration of any land from a natural state to facilitate a residential, commercial, business, industrial or public use.

DWELLING UNIT. Either a single room or two or more connected rooms sold or leased as a unit, and intended for occupancy for no less than thirty (30) consecutive days or more by one family, and which, at a minimum, contains cooking, toilet and bathing facilities that are accessed independently from any similar such facilities in the same building. This term does not include hotel or motel rooms, extended-stay lodging facilities, nursing-home rooms, or assisted living units.



MOBILE HOME. A structure, transportable in one or more sections, which is eight body feet or more in width and is 32 body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.

NEW RESIDENTIAL DEVELOPMENT. Development that triggers the application of this Ordinance.

NON-DESIGNATED ROADS. Based on development demands, system deficiencies and road capacities, roads that can accommodate existing traffic patterns at their current levels of service, though they may not meet the standards for roadway width set forth in Chapter 94, and on which increased traffic and development demands are not anticipated.

NON-SITE RELATED IMPROVEMENTS. Improvements that are not site-related, and are not constructed specifically to provide access to the proposed development.

PAYOR. The party responsible for paying the System Development Charge.

PERMIT. Any building or construction permit required by local ordinance or the Kentucky Building Code.

PUBLIC ROAD. Any right-of-way created for vehicular traffic, over which the right of access is not restricted, and which is maintained with public funds.

REPAIR. The reconstruction or renewal of any part of an existing building, for the purpose of its maintenance.

ROADWAY IMPROVEMENT. A physical asset, or the cost thereof, which is necessary to provide safe and adequate vehicular travel along a public roadway. This includes, but is not limited to, the cost of transportation planning, preliminary engineering, engineering design studies, land surveys, right-of-way acquisition, engineering, permitting and construction of all the necessary features for any road construction project, and also includes construction of through lanes or turn lanes, bridges, or drainage facilities associated with roadway construction, the purchase and installation of traffic signalization, signage or markings, the construction of curbs, medians or shoulders, and the relocation of utilities to accommodate roadway construction.

SITE-RELATED IMPROVEMENT. Any public roadway improvements planned, designed or built to provide necessary access and service to the proposed development, including frontage dedication and widening across frontage; all traffic control devices that primarily give access to the development; acceleration/deceleration lanes and left-turn and right-turn lanes to allow turning movements into or out of the development from site driveways and local and collector streets.

SYSTEM DEVELOPMENT CHARGE. A monetary charge imposed by Louisville Metro upon development activity as a condition of issuance of a residential building permit, in order to pay for public roadway facilities needed to serve new growth and development, and to mitigate the impacts of the development activity on the transportation facilities of Louisville Metro, but not including any permit or application fee.

SYSTEM DEVELOPMENT CHARGE ADMINISTRATOR. The party or parties designated by Louisville Metro to be responsible for administering this Ordinance.

TRANSPORTATION BENEFIT DISTRICT. Geographic areas of Louisville Metro established to prioritize transportation needs and manage capital roadway improvement projects. System Development Charges will be used to improve “designated” public roadways within the Transportation Benefit District in which the charges are assessed.

#### Section 164.16                      Applicability

##### (A) Requirement.

On and after the effective date of this Ordinance, any party who shall construct a new residential dwelling unit, including but not limited to single family homes, apartments, patio homes, condominiums and mobile or manufactured homes, in one of the Transportation Benefit Districts, shall be obligated to pay a Systems Development Charge for roadways. Parties who apply for building permits up to sixty (60) days after the effective date of this Ordinance shall not be required to pay a System Development Charge.

##### (B) Payment of Charges

- (1) A party applying for any building or construction permit for a development as set forth in subsection (A), above, shall pay a charge to the Systems

Development Charge Administrator for the amount of space the building permit allows to be constructed, prior to the issuance of such permit.

(2) No permit shall be issued, no connection shall be made, and no such other development shall be occupied or allowed to go into use until the charge required by this Ordinance is paid.

(C) Determination of Charge

(1) The System Development Charge shall be as set forth in Section 164.30 of this Ordinance.

(2) When a proposed development includes two or more types of residential dwelling units in any combination, including two or more types of dwelling units within a building or structure, the total System Development Charge shall be based on the sum of the charges for each type of dwelling unit, unless otherwise provided for in this Ordinance.

(3) If a development required to pay a System Development Charge under this Ordinance is located on a road classified as a Designated Road, the site-related improvements as required by the Planning Commission must be made, and a System Development Charge as set forth in Section 164.30 of this Ordinance must be paid. Any non-site-related improvements made as part of the development process may be used to offset the required System Development Charge, as set forth under 164.17(A)(2) of this Ordinance.

(4) If a development required to pay a System Development Charge under this Ordinance is located on a road not classified as a Designated Road, the road must be improved to meet the requirements set forth in all applicable ordinances of the Louisville Metro Government. Credit will be given for the cost of non-site-related roadway improvements against the System Development Charge due, however, no credit will be given for the cost of improvements that exceed the total System Development Charge due for developments on Non-Designated Roads, and no refund of expenses will be made.

*EXAMPLE: A developer chooses to develop a subdivision consisting of 70 single-family homes on property located on Smith Road, five miles from James Road which is a collector level roadway. Both roads are located in a Transportation Benefit District. Smith Road is not classified as a Designated Road and is only 12 feet wide. Based on a traffic study, it was determined that James Road will be the primary route taken to access the subdivision. The developer will be required to improve Smith Road to meet the requirements of all applicable ordinances of the Louisville Metro Government for the five miles between the subdivision and James Road, as well as across the subdivision's frontage, and pay a System Development Charge of \$70,000. The cost of the non-site-related roadway improvements may be used to offset the System Development Charge due, but cannot result in an additional credit or a refund of the cost of improvements in excess of the amount used to offset the System Development Charge.*

## Section 164.17

## Exemptions and Credits

### (A) Permitted Exemptions and Credits

(1) The following shall be exempt from the requirements of this Ordinance:

(a) Alteration, expansion or replacement of an existing residential building where no additional dwelling units are created.

(b) The construction of accessory buildings or structures which will not produce additional vehicular trips over and above those produced by the principal building or use of the land.

(c) Any development or construction undertaken by a public entity for public purposes.

(2) The following credits may be used to offset required charges under this Ordinance:

(a) All Non-site Related Roadway Improvements required as a condition of plan approval, except where those improvements are deemed to be site-related;

*EXAMPLE: A developer is required to install a left turn lane at a cost of \$100,000, along a portion of a road not directly adjacent to the development. The System Development Charge due for the development is \$200,000. The cost of the left turn lane can be used to offset the \$200,000 charge, so the total charge due would be \$100,000.*

(b) The contribution of land (not including frontage dedications), money, or services for the undertaking of

construction or related activities for non-site related improvements to public streets and roads;

(c) Non-site related roadway improvements previously contributed, paid for, or committed to by the property owner or his predecessor in interest as a condition of approval of development of the subject site after December 4, 2003.

(d) The cost of realignment of a roadway, where such realignment is required as a condition of plan approval, regardless of whether such realignment is deemed to be site-related or non-site-related.

(3) Under no circumstances will credits that exceed the System Development Charge due under this Ordinance be permitted to carry over or transfer to another development.

*EXAMPLE: A developer is required to install a left turn lane at a cost of \$300,000, along a portion of a Non-Designated Road not directly adjacent to the development. The System Development Charge due for the development is \$200,000. The cost of the left-turn lane may be used to offset the \$200,000 charge, and no charge would be due. However, the difference between the charge (\$200,000) and the cost of the improvement (\$300,000) not used to offset the charge may not be carried over by the developer to offset charges associated with another development, and may not be transferred to another developer to offset a System Development Charge due for another development.*

(B) Request for Exemption or Credit Required

(1) If a permit is requested for the proposed development, any claim for exemption or credit must be made no later than the date of the application for the permit for the proposed development.

(2) The Transportation System Development Charge Administrator shall determine the validity of any claim for exemption or credit within 30 days of receiving that claim and shall notify the claimant in writing of the determination. This notification constitutes a final action that may be appealed to the Louisville Metro Code Enforcement Board as described in Section 164.40 of this Ordinance.

Section 164.20 Establishment of Transportation Benefit Districts

(A) Districts Explained

Existing roads that fail to meet the roadway width standards of Chapter 94, are predominantly located within four Transportation Benefit Districts created to prioritize transportation needs and manage capital roadway improvement projects.

(B) Designated Roads

A list of Designated Roads shall be maintained at all times by the System Development Charge Administrator, and updated on an annual basis by the System Development Charge Oversight Committee.



(C) Review Process

(1) There shall be established a System Development Charge Oversight Committee, which shall be responsible for reviewing the classification of roads as designated or non-designated roads, the calculation of charges and amounts charged for each land use, and the determination of Transportation Benefit District boundaries on an annual basis.

(a) The composition of the Oversight Committee shall be as follows:

- (i) System Development Charge Administrator;
- (ii) Director, or designee, of the Department of Planning and Design Services;
- (iii) Director, or designee, of the Department of Public Works;
- (iv) A representative of the Home Builders Association of Louisville selected by that organization;
- (v) A representative of the Louisville Apartment Association selected by that organization;
- (vi) An individual selected by Greater Louisville, Inc.;
- (vii) A neighborhood representative selected by the Planning Committee of the Louisville Metro Planning Commission; and

(viii) A representative of the Kentucky Transportation Cabinet selected by that organization

(2) The aforementioned annual review will be completed no later than January 31 of each year.

(3) Upon completion of the annual review, the Oversight Committee will issue a report of its findings, which shall be made available to the public.

## Section 164.30 Charge Schedule

### (A) Calculation of the Charge

(1) The Louisville Metro Government shall calculate the System Development Charge due by:

(a) Verifying the number and type of dwelling units that are proposed to be constructed, as shown on the building permit application;

(b) Determining the System Development Charge that shall be applied for each dwelling unit, in accordance with subsection (2), below; and

(c) Multiplying the number of dwelling units by the applicable System Development Charge.

(2) The applicable System Development Charge by land use for each of the Transportation Benefit Districts is as follows:

- (a) For single family detached units, detached condominium units, and mobile homes, the System Development Charge shall be \$1,000.00 per unit.
- (b) For attached condominium units, the System Development Charge shall be \$500.00 per unit.
- (c) For multi-family apartment (for rent) units, the System Development Charge shall be \$250.00 per unit.

(B) Re-use and Mixed-Use Development

(1) For expansion of an existing development under an approved development plan where additional dwelling units will be constructed, the System Development Charge shall be based on the portion of the development in excess of what was permitted under the approved development plan. No Charge shall be required for construction under a development plan approved prior to the effective date of this Ordinance, if a valid building permit has been issued prior to that date. However, a System Development Charge will be due for portions of the development that have not yet been issued a valid building permit as of the effective date of this Ordinance.

*EXAMPLE: A developer obtained approval of a development plan for a single-family subdivision on October 10, 2004, prior to the effective date of this Ordinance. The developer has valid building permits issued in November, 2004, for 10 homes to be constructed in the subdivision, but has not yet obtained building permits for an additional 60 single-family homes to be constructed under the development plan. No System Development Charge will be required for the 10 homes authorized to be constructed under the existing building permits, however the developer will be required to pay the System Development Charge—in this case, \$60,000—for the construction of the remainder of the homes to be located in the subdivision.*

(2) For a proposed mixed use development, the number of proposed residential dwelling units shall be used to determine the appropriate System Development Charge for the development.

(3) For mixed commercial and residential developments where the residential component is incidental to the commercial component, the cost of roadway improvements made as a result of the commercial component of the development may be used to offset the System Development Charge due for the residential component.

*EXAMPLE: A developer proposes a shopping center with 100 patio homes incorporated into the design. The roadway improvements necessitated by the commercial component of the development will cost \$250,000. The System Development Charge due for the residential component is \$50,000. The cost of the roadway improvements can be used to offset the Charge due for the residential portion of the development. The developer will be required to pay for the total cost of the roadway improvements necessitated by the commercial development, but will not be required to pay the Charge.*

(A) Use of Funds

(1) Any funds collected under this Ordinance are expressly designated for public street and road improvements within the Transportation Benefit Districts from which those funds were collected, for payment of administrative fees, as well as for payment of consultant fees that are necessary to update the designated roads and Transportation Benefit Districts.

(a) No public street or road outside a Transportation Benefit District will be improved using funds collected under this Ordinance.

(b) Annually, an amount not to exceed the cost of administering this Ordinance may be transferred to the Louisville Metro General Fund for the purpose of paying the administrative fees associated with the System Development Charge Program, which shall be determined based on an annual audit.

(c) Charges shall be deemed to be spent on the basis that the first Charges collected shall be the first Charges spent.

(d) The Louisville Metro Finance Department shall maintain and keep financial records for System Development Charges, which shall show the source and disbursement of all Charges collected in, or expended from, each Transportation Benefit District Fund. The records of the Funds into which System Development Charges are deposited shall be open for public inspection, in accordance with Louisville Metro open records policies, during ordinary business hours. An annual financial analysis of all funds collected and expended under this Ordinance shall be performed by an independent auditor to be designated by the System Development Charge Oversight Committee.

(2) System Development Charges shall be transferred from the System Development Charge Administrator to the Louisville Metro Department of Finance and either:

(a) immediately used for the retirement of bonds issued to support the improvement of designated roads in each Transportation Benefit District; or

(b) placed into a trust fund, as described in subsection (A)(3), specifically designated for the Transportation Benefit District from which the Charges were collected, for later use

in the payment of costs of improving designated roads in that Transportation Benefit District.

(3) Creation of Trust Funds

(a) A System Development Charge trust account for each of the four (4) Transportation Benefit Districts shall be opened as a separate interest-bearing account that is segregated from the Louisville Metro general fund.

(b) System Development Charges deposited into the trust accounts, and all interest accrued on those accounts, shall be used solely for the purpose of public street and road improvements in the Transportation Benefit District from which the Charges were collected, the payment of administrative fees, and the payment of consultant fees to update the designated roads and Transportation Benefit Districts.

(c) All income derived from the interest accrued on these accounts shall be retained in the trust account on which the interest was earned.

(B) Refunds

(1) Passage of Time

Any funds in any System Development Charge trust account that have not been spent or encumbered within ten (10) years of the date on which such funds were paid shall, upon written request to the System Development Charge Administrator in accordance with subsection (5), be returned to the payor. Within six months after the ten-year period from the date on which the unspent charges were paid, the System Development Charge Administrator shall notify the payor of eligibility for a refund. The payor is responsible for maintaining a current address with the System Development Charge Administrator. Any funds for which no petition for refund has been received following 12 months of the date the payor was notified of eligibility for refund shall be retained by the Louisville Metro Government. These funds shall be expended on the type of public street and road improvements reflected in the title of the account without further limitations as to time of expenditure.

(2) Expiration of Permit

If a party has paid a System Development Charge required by this Ordinance and has:



(a) obtained a building permit or any other permit for a development or extensions thereto;

(b) the permit or extension for which the Charge was paid later expires without the possibility for future extension; and

(c) the development activity for which the permit was issued did not occur and no impact has resulted;

such party shall be eligible for a refund of the Charge paid. In order to be eligible to receive such refund, the party shall be required to submit a written request to the System Development Charge Administrator in accordance with subsection (5), within six months after the expiration of the permit, or extension for which the Charge was paid. Interest accrued on the Charge shall not be included in the refund.

### (3) No Refund for Altered Development

After a System Development Charge has been paid pursuant to this Ordinance, no refund of all or part of the Charge shall be made if the development for which the Charge was paid is later demolished or destroyed, or is altered or reconfigured so as to reduce the size of the development, the number of units in the development, or the amount of traffic generated by the development.

(4) Involuntary Demolition or Destruction

In the event a development for which a System Development Charge was paid is involuntarily demolished or destroyed, an additional Charge is not required where reconstruction follows the development plan under which the Charge was originally required. If the reconstruction deviates from the original development plan, an additional Charge will be required for any net increase in the development.

*EXAMPLE: A tornado destroys a partially built condominium development for which a System Development Charge of \$5,000 was required. To reconstruct the development according to the original development plan for which the \$5,000 was paid, the developer would not be required to pay an additional System Development Charge. However, if the developer wanted to increase the number of units in the development, a Charge equal to the difference between the original charge paid and the charge for the larger development (which reflects the net increase in the number of units to be constructed) would be required.*

(5) Request for Refund

(a) In order to obtain a refund of payments made, the payor must submit a written request to the System Development Charge Administrator within the time period designated in subsections (1) or (2). The written request must contain the following information:

(i) A copy of the dated receipt issued for payment of the System-Development Charge; and

(ii) Any other proof of entitlement to the refund of Charges as may be required by the System Development Charge Administrator.

(b) Within thirty (30) days after the date of receipt of the written request, the System Development Charge Administrator shall review the written request and determine if it is complete. If the Administrator determines that the written request is not complete, a written statement specifying the deficiencies shall be sent to the payor by certified mail. Unless the deficiencies are corrected within seven (7) days, the System Development Charge Administrator shall take no further action on the written request.

(c) When the System Development Charge Administrator determines that the written request is complete, it shall be reviewed within one (1) month. The Administrator shall approve the refund request if it is determined that the requirements of either subsection (1) or (2) have been met. The refund shall include the Charge paid, but shall not

include interest, unless otherwise provided for in this Ordinance.

#### Section 164.40 Appeals

(A) An aggrieved party may appeal the determination of any official of the Louisville Metro Government with regard to the administration of this Ordinance by submitting an appeal in writing, and requesting a hearing before the Louisville Metro Code Enforcement Board. The request shall include a written explanation of why the aggrieved party feels that a determination was in error.

(B) The Louisville Metro Code Enforcement Board ("Board") shall hold a hearing in accordance with Section 32.275, *et seq.*

(1) The Board shall be required to set forth specific and detailed written findings of fact with respect to each controverted issue on appeal, as a part of its final order.

(2) In an appeal of the imposition of a System Development Charge, the Board shall not waive the Charge, although it shall be authorized to reduce the Charge:

(a) in order to promote the public health, welfare or safety or to encourage the economic development of Louisville Metro; or

(b) upon a finding that the Charges were improperly calculated; or

(c) upon a finding that the unusual circumstances of the development demonstrate that application of the Charge to the development would be unfair or unjust.

The determination of the Louisville Metro Code Enforcement Board shall be final.

Section 164.98 Severability

If any section, subsection, sentence or clause of this chapter is held invalid or unconstitutional by any court of competent jurisdiction, then such portion shall be deemed a separate, distinct and independent provisions and such holding shall not affect the validity of the remaining portions of this chapter.

**SECTION II.** This Ordinance shall take effect upon its passage and approval.

\_\_\_\_\_  
Kathleen J. Herron  
Metro Council Clerk

\_\_\_\_\_  
Kevin J. Kramer  
President of the Council

\_\_\_\_\_  
Jerry E. Abramson  
Mayor

\_\_\_\_\_  
Approval Date

**APPROVED AS TO FORM AND LEGALITY:**

Irv Maze  
Jefferson County Attorney

BY: \_\_\_\_\_

Ordinance No. \_\_\_\_\_, Series 2005

**AN ORDINANCE AMENDING AND RE-ENACTING  
CHAPTER 95 OF THE LOUISVILLE METRO CODE  
OF ORDINANCES RELATING TO HAZARDOUS  
MATERIALS.**

**Sponsored By: Council Member  
Cheri Bryant Hamilton**

**BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE  
LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT [THE COUNCIL]  
AS FOLLOWS:**

**SECTION I.** Pursuant to KRS 67C.115(2), Chapter 95 of the Louisville Metro Code of Ordinances, is hereby amended and reenacted as follows:

**§ 95.01 PURPOSE.**

The purpose of this ordinance is for the protection of public health and safety in ~~Jefferson County~~ Louisville Metro, through prevention and control of hazardous materials incidents and releases, and to require the timely reporting of releases thereto.

**§ 95.02 APPLICABILITY.**

This ordinance shall apply to all ~~persons~~ parties who manufacture, use, or store hazardous materials in quantities prescribed by this ordinance, and as defined herein, within ~~Jefferson County~~ Louisville Metro.

### § 95.03 DEFINITIONS.

For the purpose of this ordinance, the following definitions shall apply, unless the context clearly indicates or requires a different meaning.

AUTHORIZED RELEASE. See RELEASE, AUTHORIZED.

BLUE LINE STREAM. Those streams, creeks, ditches or other waterways which appear on a USGS 7-1/2 minute quadrangle map, or other comparable streams, creeks, ditches, or waterways which do not appear merely because of the date of compilation of the USGS map.

CONSUMER PRODUCT. Any tangible personal property which is distributed in commerce, and which is normally used for personal, family, or household purposes, including any such property intended to be attached to, or installed in any real property, without regard to whether it is so attached or installed.

EMPLOYEE. Any person who works with or without compensation in a workplace.

EMPLOYER. Any person, firm, corporation, partnership, association, government agency, or other entity engaged in a business, or in providing services, that has employees.

ENVIRONMENT. The navigable waters of the United States and any other surface water, ground water, drinking water supply, soil source, subsurface strata, impervious surface, storm sewer, or publicly or privately-owned treatment works (other than those handling only wastewater generated at a facility) within

boundaries of ~~Jefferson County~~ Louisville Metro. ENVIRONMENT shall include air only for purposes of reporting releases pursuant to Section 95.06(A).

#### FACILITY.

(1) Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly-owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(2) Any site or area where a hazardous material has been deposited, stored, disposed of, or placed or otherwise come to be located, but does not include any consumer product in consumer use, or any vessel.

#### HAZARDOUS MATERIALS.

(1) Any substance designated pursuant to Section 311(b)(2)(a) of the Federal Water Pollution Control Act.

(2) Any element, compound, mixture, solution, or substance designated by the U.S. Environment Protection Agency (EPA) pursuant to the Comprehensive Environment Response, Compensation, and Liability Act of 1980, Section 102 (CERCLA).

(3) Any hazardous waste having the characteristics identified under, or listed pursuant to Section 3001 of the Solid Waste Disposal Act (commonly known as the Resource Conservation and Recovery Act or RCRA), but not including any waste the regulation of which, under the Solid Waste Disposal Act, has been suspended by ~~the~~ an Act of Congress.



(4) Any toxic pollutant listed under Section 307(a) of the Federal Water Pollution Control Act.

(5) Any hazardous air pollutant listed under Section 112 of the Clean Air Act.

(6) Any imminently-hazardous chemical substance or mixture, with respect to which the Administrator of the U.S. Environmental Protection Agency has taken action, pursuant to Section 7 of the Toxic Substances Control Act.

(7) Any substance designated an extremely hazardous substance pursuant to Section 302(a) of the Superfund Amendments and Reauthorization Act of 1986 (SARA). The term does include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs of this definition, and the term does include, if stored, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas, or synthetic gas.) Hazardous materials shall include those contained in the "List of Hazardous Materials," which is included ~~in an~~ Appendix A to this ordinance, radioactive materials and isotopes, and explosives. Hazardous materials shall not include household wastes and other materials excluded by 40 CFR 261.4. Hazardous materials shall not include any material which is a gas under standard temperature pressure except for purposes of reporting of releases pursuant to subsections 95.06(A) and (D).

IMPERVIOUS SURFACE. A surface outside of a building which substantially reduces the rate of infiltration of liquids into the earth, including, but not limited to, asphalt and concrete roadways, walks, and parking lots, but not including a closed-containment vessel.

MANUFACTURE. To produce, import, or compound a hazardous material, whether produced as an end product or by-product in the production of another substance. The term shall also include hazardous substances that remain in end products as impurities.

NAVIGABLE WATER. The waters of the United States, including the territorial seas.

NORMAL APPLICATION OF PESTICIDES. Application pursuant to the label directions for application of a pesticide product registered under Section 30 or Section 24 of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 135 et seq. (FIFRA), or pursuant to the terms and conditions of an experimental-use permit issued under Section 5 of FIFRA, or pursuant to an exemption granted under Section 18 of FIFRA.

OIL. Any kind or in any form, including but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

~~PERSON~~ PARTY. Any individual, trust, firm, company, society, corporation, joint-stock company, partnership, consortium, association, cooperative, joint venture, ~~Metro Government~~, city, county, ~~city, county and Metro Government~~ special district, the state, or any department or agency or political

subdivision thereof, United States Government, or other commercial or legal entities.

RELEASE. Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excludes:

(1) With respect to a claim which such ~~persons~~ parties may assert against the employer of such persons as provided by CERCLA regulations, any release which results in exposure to ~~persons~~ parties solely within a workplace;

(2) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; and

(3) The normal application of fertilizer and pesticides.

RELEASE, AUTHORIZED.

(1) A release which is federally permitted under 42 U.S.C. 9601(10);

(2) A release to waters of the United States or adjoining shorelines which is exempt from notification under 40 CFR 117.11 through 40 CFR 117.14;

(3) The introduction of any pollutant into a publicly-owned treatment works, which is not in violation of applicable pretreatment requirements or other regulations controlling the introduction of pollutants into the publicly owned treatment works; and

(4) Any release which is specifically authorized by the administering agency after review of the HMPC Plan submitted pursuant to Section 95.07, provided that the HMPC Plan is part of an approved permit.

REPORTABLE QUANTITY. That quantity, as set forth in Section 95.04.

STORE. To deposit or place a substance within the city or county Louisville Metro for a period of 10 days or more, provided that such substance is not otherwise in transit.

THREATENED RELEASE. A circumstance which presents a substantial threat of a release as a result of a transportation incident. A threatened release would be evidenced by the puncturing of the inner or outer shell of the container structure, whether or not an actual release occurs.

USE. To store, maintain, treat, process, handle, generate, dispose of, or otherwise manage. USE shall include any mode of transportation other than on-site transportation.

VESSEL. Every description of watercraft or other artificial contrivance used or capable of being used as a means of transportation on water.

#### § 95.04 DETERMINATION OF REPORTABLE QUANTITIES.

(A) Listed hazardous materials The quantity in the column "RQ" for each hazardous material in Appendix A is the reportable quantity for that material. The Appendix A list (40 CFR Part 302) will be automatically updated at such times as EPA publishes a new list. "Reportable Quantities" may be adjusted higher or lower as provided by subsections 95.04(D) and (G).

(B) Unlisted hazardous materials. Unlisted hazardous wastes designated as hazardous materials have the reportable quantity of 100 pounds, except for those unlisted hazardous wastes exhibiting the characteristics of toxicity identified in 40 CFR 261.24. Unlisted hazardous wastes which exhibit toxicity have the reportable quantities listed in Appendix A for the contaminant on which the characteristic of toxicity is based. If an unlisted hazardous waste exhibits toxicity on the basis of more than one contaminant, the reportable quantity for that waste shall be the lowest of the reportable quantities listed in Appendix A for those contaminants. If an unlisted hazardous waste exhibits the characteristic of toxicity, and either characteristics ignitability or corrosivity or reactivity, the reportable quantity shall be the lowest of the applicable reportable quantities.

(C) Oil.

(1) The reportable quantity for releases of oil to waters of the United States or adjoining shoreline is any quantity which violates applicable water quality standards, or causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or causes a sludge or emulsion to be deposited beneath the surface of the water, or upon adjoining shorelines.

(2) The reportable quantity for releases of oil to the environment other than releases to waters of the U.S. and adjoining shorelines is 56 gallons.

(3) Notwithstanding any other provision of this section, a release of oil from a properly functioning vessel engine shall not be deemed to be in

reportable quantity; this provision shall not be applicable to oil accumulated in a vessel's bilges.

(D) Higher reportable quantity. Notwithstanding any other provision of this section, the administering agency, after review of the HMPC Plan submitted pursuant to Section 95.07, may designate a reportable quantity for a hazardous material in excess of the quantity determined under this section if the administering agency determines that the higher reportable quantity is consistent with the purposes and objectives of this ordinance.

(E) Release of hazardous materials to sanitary sewer system. Notwithstanding any other provision of this section, any release of a hazardous material to a sanitary sewer system, storm sewer system, or blue line stream, or tributary to blue line stream, which is prohibited under applicable pretreatment or other regulations governing such discharges shall be deemed to be discharged in a reportable quantity.

(F) Component hazardous materials release.

(1) A release of a mixture or solution, of which one hazardous material is a component, shall be considered to be a release in a reportable quantity only where the component hazardous material of the mixture or solution is released in a quantity equal to or greater than its reportable quantity.

(2) A release of a mixture or solution of two or more hazardous materials which share the same characteristics of ignitability or corrosivity or reactivity and toxicity shall be considered a release in a reportable quantity equal to or greater than the reportable quantity of any of the hazardous materials in the

mixture or solution. The quantity of non-hazardous materials shall not be included for purposes of reporting.

(G) Adjustments to reportable quantity list. The Appeals and Overseer Board, upon recommendation of a local regulatory agency, or upon request for review by a regulated hazardous materials user, may adjust upward or downward the reportable quantity on the most current applicable list.

(H) SARA "RQ" list. A substance designated an extremely hazardous substance pursuant to Section 302(a) of the SARA of 1986 shall have the reportable quantity as set by the act under Section 304(a)(2). If the reportable quantity under the federal act differs from the RQ listed for the same substance in Appendix A to this ordinance, the lowest RQ shall be the reportable quantity.

#### § 95.05 ADMINISTERING AGENCY.

The purpose of this ordinance is to establish a uniform ~~county-wide~~ program throughout Louisville Metro for protection of the environment from releases of hazardous materials to be administered by existing governmental agencies. The Metropolitan Sewer District (MSD) shall serve as the lead agency in the administration of this ordinance.

#### § 95.06 NOTIFICATION TO FIRE COMMUNICATIONS BUREAU.

(A) Notice upon discovery. Whenever a release (other than an authorized release) of any hazardous material in a reportable quantity occurs on any facilities of any kind, the ~~person~~ party in charge (or a responding fire, police,

or emergency medical service personnel) upon discovery or confirmation of such release shall immediately cause notice of the existence for such release, the circumstances of same, and the location thereof to be given to the Fire Communications Bureau (FCB), or successor agency or subagency as identified within MetroSafe. Such notice is required when the circumstances and conditions on site are such that the individuals enumerated above should have known that a release occurred.

(B) Emergency telephone number. The notice required by this section in ~~Jefferson County~~ Louisville Metro shall be given by telephoning "911" ~~or such other emergency telephone number as may be designated~~. This one call will meet the requirement of notifying local agencies and to the extent permitted under an existing memorandum of understanding will provide notice to the Kentucky Cabinet for Natural Resources and Fire Marshall.

(C) Duty to control release. The requirements of this section shall not be construed to forbid any ~~person~~ party on or about the facilities from using all diligence necessary to control such release prior to the notification to ~~the Fire Communications Bureau~~ FCB, especially if such efforts may result in the containment of the release and/or the abatement of extreme hazard to the employees of the general public. Delays in reporting releases due to in-house notification of off-site owners/supervisors shall not be acceptable and may result in penalties.

(D) Air releases.



(1) Accidental air releases in excess of the reportable quantities listed in Appendix A or, if unlisted, as prescribed by Section 95.04 (releases that are required to be reported to state and federal authorities) shall be reported under the requirements of this section unless different reportable quantity has been established under an approved HMPC Plan for the particular facility.

(2) In order to insure compliance with the notice requirement of subsection 95.06(A), any ~~person~~ party required to prepare and submit a HMPC Plan for a facility pursuant to Section 95.07 who possesses or stores at such facility hazardous materials that are a gas at standard temperature and pressure in quantities equal to or greater than the reportable quantity shall maintain at the facility a list of such materials. Any ~~person~~ party required to maintain a list pursuant to this section may, in lieu thereof, incorporate such list in its HMPC Plan. Any list maintained pursuant to this section shall, upon request, be made available at the facility to representatives of the administering agency.

(E) Threatened release.

(1) Whenever a threatened release occurs, as defined in Section 95.03 the ~~party~~ in charge (or a responding fire, police or emergency medical services personnel), upon discovery of such threatened release, shall immediately cause notice of the existence of such threatened release, the circumstances of same, and the location thereof to be given to "911."

(2) Such notice is also required when the circumstances and conditions on-site are such that the ~~individuals~~ parties enumerated above should have known that the release or environmental emergency occurred.

(F) Duty to report to federal agencies. No statement contained in this section shall be construed to exempt or release any ~~person~~ party from any other notification or reporting procedure required by any federal agency.

#### § 95.07 HAZARDOUS MATERIALS USE AND SPILL PREVENTION CONTROL PLAN.

(A) Applicability. The following ~~persons who~~ parties that use hazardous materials must prepare, submit, and maintain a “Louisville/~~Jefferson County~~ Metro Hazardous Materials Use and Spill Prevention Control Plan,” hereinafter referred to as the HMPC Plan:

(1) All federal, state, and local government entities in ~~Jefferson County which~~ Louisville Metro that use hazardous materials; and

(2) All of the following businesses or services in ~~Jefferson County which~~ Louisville Metro that use hazardous materials, as classified by the Standard Industrial Classification (SIC) code:

0782 Lawn and garden services

2011-3999 Manufacturing

4011-4953 Transportation, communication and public utilities

5043 Photograph equipment and supplies (wholesale trade)

5085 Industrial supplies (wholesale trade)

5161-5199 Specific categories in wholesale trade

5541 Gasoline service stations (retail trade)

7011-7218 Industrial and commercial launderers, etc. in services

7342 Disinfecting and exterminating services

7395 Photofinishing laboratories in services

7512 Passenger car rental in services

7513 Truck rental and leasing

7538-7549 Automotive repair shops and auto services in services

8062 General medical and surgical hospitals in services

8063 Psychiatric hospitals in services

8069 Specialty hospitals except psychiatric in services

(3) Those ~~persons~~ parties not covered in subsections 95.07(A)(1) or (2) above who use hazardous materials may be required to submit a HMPC Plan if the administering agency finds it necessary to protect the public health and safety.

(4) The administering agency shall not require an HMPC Plan or amendments to an existing plan for those hazardous materials added to this ordinance by adoption of the "extremely hazardous substances" list pursuant to 302(A) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) until such time as the reporting format under (SARA) and under this ordinance have been reconciled, ~~but in no event shall such plan be required prior to August 1, 1993.~~

(B) Exemptions.

(1) ~~Persons who~~ Parties that handle agriculture chemicals in the ordinary course of agriculture operations other than warehousing or bulk storage of such chemicals for resale or commercial application.

(2) ~~Persons who~~ Parties that handle hazardous materials otherwise regulated only at temporary construction sites.

(3) ~~Persons who~~ Parties that handle materials only in conjunction with residential use of property for non-commercial purposes.

(4) Consumer products and foodstuffs packaged for distribution to and intended for use by the general public. This refers to ingredients used in production of foodstuffs which are regulated by the federal Food, Drug and Cosmetic Act as amended.

(5) Retail sale, however, where a portion of the retail sale is used for bulk storage is regulated.

(6) Liquor stores.

(7) Any other exemption based on specific application to the administering agency, provided that such element, compound, mixture, solution or substance to be considered for exemption, when released into the environment will not present danger to the public health or welfare or the environment or to the employees of any ~~person~~ party or the general public.

(8) ~~Persons who~~ Parties that do not handle hazardous materials in quantities, provided that the administering agency may require a plan under such conditions as set forth in subsection 95.07(A)(3) above.

(C) Requirements for HMPC Plan. The administering agency shall provide forms with the necessary instructions and requirements for completing HMPC Plans in compliance with this ordinance. The HMPC Plan will include but not be limited to:

- (1) Facility identification;
- (2) Spill history;
- (3) Identification of hazardous material (HM) storage, in-plant transfer, process and materials handling areas and hazardous material truck and rail car loading and unloading areas;
- (4) Description of plant site runoff from areas described in subsection 95.07(C)(3), including in-place containment appurtenances (for example, dikes) and means of releasing rainwater from such areas;
- (5) Other means of spill prevention, control and countermeasure of all listed hazardous materials, such as containment or detection equipment and absorbent materials;
- (6) Provisions for the operation and maintenance of all items described in subsection 95.07(C)(5);
- (7) Contingency plans, including spill notification procedures for both internal personnel as well as outside authorities, including MSD;
- (8) Provisions for the training of personnel in the utilization of subsection 95.07(C)(7);
- (9) Security provisions;
- (10) Provisions for inspections, spill reports preparation, and records retention;
- (11) Schedule (with actual dates or mile-stones) for plan elements yet to be implemented, with provisions for reporting progress to MSD;
- (12) Provisions for plan review and amendment submission;

(13) Certification of plan by an officer of the company or his written designee; however, any activity which can be defined as engineering or the practice of engineering by KRS 322.010 shall be performed by a registered professional engineer, licensed to practice in the Commonwealth unless otherwise exempted by KRS Chapter 322;

(14) For purposes of this section, one plan may be submitted by the owner of electrical equipment at multiple locations when such equipment contains materials used either as a lubricant, coolant, or insulation for the operation of such equipment; subsections 95.07(C)(3) and (4), above, shall not apply to single plans authorized under this ordinance.

(D) Amended reportable quantities. HMPC Plans submitted as part of an MSD Wastewater Discharge Permit may provide for amended reportable quantities for releases, provided that such amendments are approved by the administering agency and the requesting industry has a good safety record relating to hazardous materials use.

(E) Review and approval of plan. The HMPC Plan shall be reviewed by MSD and the Health Department, the fire department with jurisdiction, and any other local agency with appropriate authority; however, final administrative action on the HMPC Plan shall be taken by the administering agency. Upon submission of the HMPC Plan, the ~~person~~ party submitting the plan shall be presumed to be in compliance with this section pending final review of the plan. HMPC Plans which do not provide necessary information or are otherwise deficient shall be

rejected and returned to the ~~person~~ party submitting the plan for revision and resubmittal.

(F) Appeals. Any rejection or denial of approval of a HMPC Plan may be appealed to the Appeals and Overseer Board pursuant to Section 95.11.

(G) Updates, revisions, and changes. A new or modified HMPC Plan may be required and submitted to the administering agency with jurisdiction when any ~~person~~ party institutes the use of a new process or change in its manufacturing or processing facilities or when there is a significant change in its existing operating or wastewater constituents or characteristics.

(H) Training and education programs.

(1) Each employer or employee who uses hazardous materials as herein defined and who is required to prepare a HMPC Plan shall be required to have an initial and ongoing safety and accident prevention training program for all such employees. This training and education program shall include but not be limited to appropriate work practices, protective measures, and emergency procedures. The details and frequency of the training program should be provided as part of the HMPC Plan for the facility as provided in subsection 95.07(C)(7).

(2) The administering agency shall have the authority to require different frequencies of training for industries with frequent spills and/or spill histories.

#### § 95.08 INSPECTION AND INVESTIGATION.

(A) Inspections. The administering agency shall have the authority to conduct periodic inspections of any facilities for the purposes of ascertaining or causing to be corrected any condition which may be a violation of this ordinance. Joint inspection shall be conducted where necessary for purposes of HMPC Plan review. Inspections shall be made during normal working hours.

(B) Investigations. When information that has been received for evidence indicates that an unreported release may have occurred on a property or facility, the administering agency shall be allowed immediate access to the facility by company personnel to conduct a proper investigation. Admission under this provision shall be consistent with the company's safety procedures and incident protocols, ~~outlined in Annex X~~ but shall not result in an unreasonable delay.

#### § 95.09 CONFIDENTIAL INFORMATION AND TRADE SECRETS.

(A) Information and data provided by any ~~person~~ party or obtained from any report, questionnaire, permit application, permit and monitoring program and from inspections shall not be made available to the public or any other governmental agency unless required by law.

(B) (1) Upon submission of information in any form, it shall be the obligation of the submitter to separate all claimed confidential and trade secret material from any material subject to disclosure under the law.



(2) Any material that has been designated as confidential business information by the Kentucky Natural Resources and Environmental Protection Cabinet, or successor agency, shall retain its confidential status and shall not be subject to disclosure, in accordance with the Kentucky Open Records Act, KRS 61.870 et. seq.

(C) Any requests made under the law for information that has been designated by either the submitter or by the Commonwealth as containing confidential or trade secrets shall be brought to the attention of the ~~person~~ party requesting confidentiality of its trade secrets ~~by certified mail return receipt requested.~~ The notification shall advise the ~~person~~ party requesting confidentiality of the decision of the administering agency regarding release of the confidential information in accordance with any applicable laws or regulations, including provision of fifteen days' notice to such party that the review for disclosure has been requested. ~~In no event will such confidential information be released until five days have elapsed from the date notice is sent by registered mail.~~

(D) (1) If in response to an Open Records request made of Metro Government, 72 hours after receipt of notification, the ~~person~~ party requesting confidentiality of its trade secrets shall have the burden to make a claim of confidentiality within the period specified in the notification, or prior to the period of time in which the request must, by law, be answered, or otherwise to initiate appropriate actions at law or otherwise to protect its confidential or trade secrets

from disclosure, and must demonstrate that public disclosure of confidential or trade secrets is likely to cause substantial harm to this competitive position.

(2) If a claim of confidentiality is made, and legal counsel for Metro Government exercises this claim against his/her articulated position to that party that such information is releasable under the Kentucky Open Records Act, the party who exercised the right to claim the exemption from disclosure shall be responsible for the defense of this position, both financially and substantively.

(E) Any ~~individual who~~ party that releases information containing confidential or trade secrets in violation of the law or this ordinance shall be subject to disciplinary action by his/her employer for malfeasance, misfeasance, and willful neglect of official duties and may further be guilty of misuse of confidential information under KRS 522.040. This subsection shall not apply to any party responding as an agent of Metro Government to an official Open Records request made in accordance with KRS 61.870, et. seq.

(F) The provisions of this section shall in no way prohibit or limit the exchange of information, confidential or otherwise, between public agencies when the exchange is serving a legitimate governmental need or is necessary in the performance of a legitimate governmental need or is necessary in the performance of a legitimate government function.

(G) MSD shall be the repository for all trade secret information.

§ 95.10 ENFORCEMENT; NOTICE OF VIOLATION.

(A) Primary responsibility. MSD shall have primary responsibility for enforcement of the provisions of this ordinance.

(B) Notice. Upon notification or discovery of any violation of the provisions of this ordinance, the administering agency shall immediately investigate the site upon which the violation is located. The administering agency will be the lead enforcement agency for violations of this ordinance. If a violation exists, a notice describing the violation shall be served upon the ~~person~~ party that is responsible for the facilities upon which the violation has occurred, if the identity of the ~~person~~ party is known. The notice shall also include the following if applicable:

(1) A statement that the situation must be abated within the period of time prescribed by the administering agency, giving the ~~person~~ party responsible for the release the option to initiate cleanup and disposal, provided that no unreasonable delay or damage to the public is the result thereof.

(2) A statement that if the situation is not remedied within the prescribed period of time, the administering agency with jurisdiction may proceed to correct the violation.

(3) A statement that the ~~person~~ party shall be liable for any costs occurred by public agencies associated with their releases except for those costs that are associated with a normal emergency response.

(4) A statement that after the administering agency has corrected the violation, a bill shall be sent charging the ~~person~~ party the amount

of costs and expenses incurred by the governmental agency in correcting the violation.

(5) A statement that penalties may be levied for violations that have occurred.

(C) Governmental response. In cases where the identity of a ~~person~~ who party that is responsible for facilities upon which a violation has occurred is not known at the time a violation is reported, ~~the~~ Metro Government, or any governmental agency with jurisdiction in ~~Jefferson County~~ Louisville Metro, may take reasonable steps to abate any problem, and may take reasonable steps to clean up the area affected to assure continuing safety of the public and the environment. When the identity of the ~~person~~ party responsible for the facility is determined, a bill shall be sent to the ~~person~~ party for the costs for correcting the violation according to the provisions of subsection 95.10(B).

(D) Injunctive relief. The administering agency is empowered to seek injunctive relief for violations of this ordinance should other means prove ineffective and a threat to public health and safety exists.

#### § 95.11 APPEALS AND OVERSEER BOARD.

(A) Purpose. An Appeals and Overseer Board, composed ~~of~~ of representatives of industry, regulatory agencies and the general public, appointed by the Mayor of Metro Government, shall be established to insure that an appeal is available to those ~~persons~~ parties aggrieved by an action of the administering agency regarding the adequacy of a HMPC Plan; to those ~~persons~~

parties fined or penalized pursuant to this ordinance; and to coordinate and integrate the policies and procedures of the regulating agencies and ~~person~~ parties related to the HMPC Plan. Any recommendation of the Appeals and Overseer Board shall be advisory only and shall not be binding in any manner whatsoever upon the Board of the Administering Agency.

(B) Appeal. The Board, in hearing an appeal, shall recommend to the administering agency that the agency's action be modified, upheld, or dismissed or that a fine or penalty levied upon a ~~person~~ party for violation of any provision of this ordinance be set aside, modified or left intact. The Board, upon an HMPC Plan appeal, may recommend to the administering agency exemptions or modifications in the content of the HMPC Plan and requirements for reporting hazardous materials releases, provided that such exemption or modification is based on the preventive physical aspects of the facility, including containment structures and automatic monitors, and the recognized and documented good performance of the industry in handling hazardous materials.

(C) Composition. The Board shall be composed of representatives of industry, regulatory agencies and the general public not to exceed nine members. The Mayor of Metro Government shall appoint nine members, four of whom shall be representatives of regulated industry appointed from a list of at least ten names submitted by Greater Louisville, Inc.; three of whom shall be representatives of regulatory agencies; and two of whom shall be representatives of the general public. A simple majority of the Board shall constitute a quorum.

The Appeals and Overseer Board shall function according to by-laws developed by the Board.

#### § 95.12 AFFIRMATIVE DEFENSE.

It shall be an affirmative defense to any enforcement action other than an action for violation of Section 95.06, including the recovery of cleanup costs pursuant to this ordinance if a ~~person~~ party can prove that a release of hazardous materials was caused solely by an act of God, an act of war, negligence on the part of the Metro Government, or an act or omission of a third party, or any combination of the foregoing clauses.

#### § 95.13 FEES.

Fees shall be imposed for HMPC Plan review or approval, the revenues of which shall cover only the costs of HMPC Plan review and approval. The administering agency will set and collect fees. The fee schedule shall be uniform for all administering agencies.

#### § 95.14 DISCLAIMER OF LIABILITY.

This ordinance shall not create liability on the part of the administering agency for any damages that result from reliance on the ordinance or any administrative decision lawfully made thereunder. All ~~persons~~ parties are advised to determine to their own satisfaction the level of protection, in addition

to that required by this ordinance, necessary or desirable to ensure that there is no unauthorized release of hazardous materials.

#### § 95.98 SEVERABILITY.

If any provision of this chapter as now or later amended or its application to any ~~person~~ party or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

#### § 95.99 PENALTY.

(A) Amount exceeding reportable quantity. ~~The person~~ Any party responsible for a hazardous material release in an amount exceeding the reportable quantity may be fined not more than \$1,000, if the release is not an authorized release, and if the release involved willful violations, negligence, or repeated spills under similar conditions and where a significant quantity of hazardous material is involved taking into account real or potential damage to the environment and threat to the public health. Every incident giving rise to such a release shall constitute a separate offense; however, no ~~person~~ party shall be held responsible for more than one violation per day where the violations occur at the same facility and are causally related.

(B) Failure to notify fire communications bureau. ~~The person~~ Any party who fails to notify the ~~Fire Communication Bureau~~ FCB as required by Section 95.06 may be fined not more than \$5,000.

(C) Any provision other than notification. ~~The person~~ Any party who otherwise violates any provision of this ordinance other than Section 95.06, including failure to comply with an HMPC Plan, shall be fined not more than \$100. Every incident giving rise to such a violation shall constitute a separate offense; however, no ~~person~~ party shall be held responsible for more than one violation per day where the violations occur at the same facility and are causally related.

(D) Administrative fines. Any ~~person~~ party violating any of the provisions of this ordinance shall, subject to the affirmative defenses set forth in Section 95.12, become liable civilly to the Metro Government, political subdivisions thereof, or fire protection districts for any expense, loss, or damage caused to the government, political subdivision, or fire protection districts by reason of such violation, including but not limited to any cleanup, evacuation, administrative or other expenses, and legal expenses.

(E) Violation of MSD Wastewater Discharge regulations. Any ~~person~~ party ~~who~~ that violates any provision of the MSD Wastewater Discharge Regulations, requirements, or conditions set forth in permits duly issued, or ~~who~~ that discharges wastewater which cause pollution, or violates any cease and desist order, prohibition, discharge limitation, natural standard or performance, pretreatment, or toxicity standard may also be ~~liable civilly to liabilities~~ civilly liable for penalties imposed by the Metropolitan Sewer District. The civil liability may be in a sum not to exceed \$10,000 for each violation. Each incident giving rise to a violation of these sections shall constitute a separate offense; however,



no ~~person~~ party shall be held responsible for more than one violation per day where the violation occurs at the same facility and are causally related.

(F) Penalties imposed pursuant to legislative authority. Any penalties imposed under this section shall be levied by the administering agency with jurisdiction pursuant to its legislative authority.

## APPENDIX A

### 1. ADOPTION BY REFERENCE.

(A) The “Summary of the Hazardous Materials Ordinance and Listing of Hazardous Materials (Appendix A),” and all amendments thereto, attached to Ord. 17-1993, adopted and effective 7-7-1993, are hereby adopted by reference and incorporated into this Code of Ordinances, as if fully set forth herein.

(B) Copies of Appendix A are available for public inspection during normal hours at the office of the ~~City~~ Metro Council Clerk.

**SECTION II.** This Ordinance shall take effect upon its passage and approval.

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Kathleen J. Herron  
Metro Council Clerk

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Dr. Barbara E. Shanklin  
President of the Council

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Jerry E. Abramson  
Mayor

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Approval Date

**APPROVED AS TO FORM AND LEGALITY:**

Irv Maze  
Jefferson County Attorney

BY: \_\_\_\_\_

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Ordinance No. \_\_\_\_\_, Series 2005

**AN ORDINANCE AMENDING AND RE-ENACTING  
CHAPTER 95 OF THE LOUISVILLE METRO CODE  
OF ORDINANCES RELATING TO HAZARDOUS  
MATERIALS (AS AMENDED).**

**Sponsored By: Council Member  
Cheri Bryant Hamilton**

**BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE  
LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT [THE COUNCIL]  
AS FOLLOWS:**

**SECTION I.** Pursuant to KRS 67C.115(2), Chapter 95 of the Louisville Metro Code of Ordinances, is hereby amended and reenacted as follows:

**§ 95.01 PURPOSE.**

The purpose of this ordinance is for the protection of public health and safety in ~~Jefferson County~~ Louisville Metro, through prevention and control of hazardous materials incidents and releases, and to require the timely reporting of releases thereto.

**§ 95.02 APPLICABILITY.**

This ordinance shall apply to all ~~persons~~ parties who manufacture, use, or store hazardous materials in quantities prescribed by this ordinance, and as defined herein, within ~~Jefferson County~~ Louisville Metro.

## § 95.03 DEFINITIONS.

For the purpose of this ordinance, the following definitions shall apply, unless the context clearly indicates or requires a different meaning.

AUTHORIZED RELEASE. See RELEASE, AUTHORIZED.

BLUE LINE STREAM. Those streams, creeks, ditches or other waterways which appear on a USGS 7-1/2 minute quadrangle map, shown by a blue line, or other comparable streams, creeks, ditches, or waterways which do not appear merely because of the date of compilation of the USGS map.

CONSUMER PRODUCT. Any tangible personal property which is distributed in commerce, and which is normally used for personal, family, or household purposes, including any such property intended to be attached to, or installed in any real property, without regard to whether it is so attached or installed.

EMPLOYEE. Any person who works with or without compensation in a workplace.

EMPLOYER. Any person, firm, corporation, partnership, association, government agency, or other entity engaged in a business, or in providing services, that has employees.

ENVIRONMENT. The navigable waters of the United States and any other surface water, ground water, drinking water supply, soil source, subsurface strata, impervious surface - either indoors or outdoors, storm sewer, or publicly or privately-owned treatment works (other than those handling only wastewater generated at a facility) within boundaries of ~~Jefferson County~~ Louisville Metro.

ENVIRONMENT shall include air only for purposes of reporting releases pursuant to Section 95.06(A).

FACILITY.

(1) Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly-owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(2) Any site or area where a hazardous material has been deposited, stored, disposed of, or placed or otherwise come to be located, but does not include any consumer product in consumer use, or any vessel.

HAZARDOUS MATERIALS.

(1) Any substance designated pursuant to Section 311(b)(2)(a) of the Federal Water Pollution Control Act.

(2) Any element, compound, mixture, solution, or substance designated by the U.S. Environment Protection Agency (EPA) pursuant to the Comprehensive Environment Response, Compensation, and Liability Act of 1980, Section 102 (CERCLA).

(3) Any hazardous waste having the characteristics identified under, or listed pursuant to Section 3001 of the Solid Waste Disposal Act (commonly known as the Resource Conservation and Recovery Act or RCRA), but not including any waste the regulation of which, under the Solid Waste Disposal Act, has been suspended by ~~the~~ an Act of Congress.

(4) Any toxic pollutant listed under Section 307(a) of the Federal Water Pollution Control Act.

(5) Any hazardous air pollutant listed under Section 112 of the Clean Air Act.

(6) Any imminently-hazardous chemical substance or mixture, with respect to which the Administrator of the U.S. Environmental Protection Agency has taken action pursuant to Section 7 of the Toxic Substances Control Act.

(7) Any substance designated an extremely hazardous substance pursuant to Section 302(a) of the Superfund Amendments and Reauthorization Act of 1986 (SARA). The term does include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs of this definition, and the term does include, if stored, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas, or synthetic gas.) Hazardous materials shall include those contained in the "List of Hazardous Materials," which is included ~~in an~~ Appendix A to this ordinance, radioactive materials and isotopes, and explosives. Hazardous materials shall not include household wastes and other materials excluded by 40 CFR 261.4. ~~Hazardous materials shall not include any material which is a gas under standard temperature pressure except for purposes of reporting of releases pursuant to subsections 95.06(A) and (D).~~

HMPC - Shall refer to the Louisville Metro Hazardous Materials Use and Spill Prevention Control Plan, as set forth herein.

~~IMPERVIOUS SURFACE. A surface outside of a building which substantially reduces the rate of infiltration of liquids into the earth, including, but not limited to, asphalt and concrete roadways, walks, and parking lots, but not including a closed containment vessel.~~

MANUFACTURE. To produce, import, or compound a hazardous material, whether produced as an end product or by-product in the production of another substance. The term shall also include hazardous substances that remain in end products as impurities.

NAVIGABLE WATER. The waters of the United States, including the territorial seas.

NORMAL APPLICATION OF PESTICIDES. Application pursuant to the label directions for application of a pesticide product registered under Section 30 or Section 24 of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 135 et seq. (FIFRA), or pursuant to the terms and conditions of an experimental-use permit issued under Section 5 of FIFRA, or pursuant to an exemption granted under Section 18 of FIFRA.

OIL. Any kind or in any form, including but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

~~PERSON~~ PARTY. Any individual, trust, firm, company, society, corporation, joint-stock company, partnership, consortium, association, cooperative, joint venture, ~~Metro Government, city, county, city, county and Metro~~

~~Government~~ special district, the state, or any department, or agency, or political subdivision thereof, United States Government, or other commercial or legal entities.

RELEASE. Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excludes:

(1) With respect to a claim which such ~~persons~~ parties may assert against the employer of such ~~persons~~ parties as provided by CERCLA regulations, any release which results in exposure to ~~persons~~ parties solely within a workplace;

(2) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; and

(3) The normal application of fertilizer and pesticides.

RELEASE, AUTHORIZED.

(1) A release which is federally permitted under 42 U.S.C. 9601(10);

(2) A release to waters of the United States or adjoining shorelines which is exempt from notification under 40 CFR 117.11 through 40 CFR 117.14;

(3) The introduction of any pollutant into a publicly-owned treatment works, which is not in violation of applicable pretreatment requirements or other regulations controlling the introduction of pollutants into the publicly owned treatment works; and



(4) Any release which is specifically authorized by the administering agency after review of the HMPC Plan submitted pursuant to Section 95.07, provided that the HMPC Plan is part of an approved permit.

REPORTABLE QUANTITY. That quantity, as set forth in Section 95.04.

STORE. To deposit or place a substance within the city or county Louisville Metro for a period of 10 days or more, provided that such substance is not otherwise in transit.

THREATENED RELEASE. A circumstance which presents a substantial threat of a release only as a result of a transportation incident. A threatened release would be evidenced by the puncturing of the inner or outer shell of the container structure, whether or not an actual release occurs.

USE. To store, maintain, treat, process, handle, generate, dispose of, or otherwise manage. USE shall include any mode of transportation other than on-site transportation.

VESSEL. Every description of watercraft or other artificial contrivance used or capable of being used as a means of transportation on water.

#### § 95.04 DETERMINATION OF REPORTABLE QUANTITIES.

(A) Listed hazardous materials. The quantity in the column "RQ" for each hazardous material in Appendix A is the reportable quantity for that material. The Appendix A list (40 CFR Part 302) will be automatically updated at such times as EPA publishes a new list. "Reportable Quantities" may be adjusted higher or lower as provided by subsections ~~95.04(D) and (G)~~ (F), herein.

(B) Unlisted hazardous materials. Unlisted hazardous wastes designated as hazardous materials have the reportable quantity of 100 pounds, except for those unlisted hazardous wastes exhibiting the characteristics of toxicity identified in 40 CFR 261.24. Unlisted hazardous wastes which exhibit toxicity have the reportable quantities listed in Appendix A for the contaminant on which the characteristic of toxicity is based. If an unlisted hazardous waste exhibits toxicity on the basis of more than one contaminant, the reportable quantity for that waste shall be the lowest of the reportable quantities listed in Appendix A for those contaminants. If an unlisted hazardous waste exhibits the characteristic of toxicity, and either characteristics ignitability or corrosivity or reactivity, the reportable quantity shall be the lowest of the applicable reportable quantities.

(C) Oil.

(1) The reportable quantity for releases of oil to waters of the United States or adjoining shoreline is any quantity which violates applicable water quality standards, or causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or causes a sludge or emulsion to be deposited beneath the surface of the water, or upon adjoining shorelines.

(2) The reportable quantity for releases of oil to the environment other than releases to waters of the U.S. and adjoining shorelines is 56 gallons.

(3) Notwithstanding any other provision of this section, a release of oil from a properly functioning vessel engine shall not be deemed to be in

reportable quantity; this provision shall not be applicable to oil accumulated in a vessel's bilges.

~~(D) Higher reportable quantity. Notwithstanding any other provision of this section, the administering agency, after review of the HMPC Plan submitted pursuant to Section 95.0, may designate a reportable quantity for a hazardous material in excess of the quantity determined under this section if the administering agency determines that the higher reportable quantity is consistent with the purposes and objectives of this ordinance.~~

~~(E)~~ Release of hazardous materials to sanitary sewer system. Notwithstanding any other provision of this section, any release of a hazardous material to a sanitary sewer system, storm sewer system, or blue line stream, or tributary to blue line stream, which is prohibited under applicable pretreatment or other regulations governing such discharges shall be deemed to be discharged in a reportable quantity.

~~(F)~~(E) Component hazardous materials release.

(1) A release of a mixture or solution, of which one hazardous material is a component, shall be considered to be a release in a reportable quantity only where the component hazardous material of the mixture or solution is released in a quantity equal to or greater than its reportable quantity.

(2) A release of a mixture or solution of two or more hazardous materials which share the same characteristics of ignitability or corrosivity or reactivity and toxicity shall be considered a release in a reportable quantity equal to or greater than the reportable quantity of any of the hazardous materials in the

mixture or solution. The quantity of non-hazardous materials shall not be included for purposes of reporting.

~~(G)~~ (F) Adjustments to reportable quantity list. The Appeals and Overseers Board established under Section 95.11, upon recommendation of a local regulatory agency, or upon request for review by a regulated hazardous materials user, may adjust upward or downward the reportable quantity on the most current applicable list.

~~(H)~~ (G) SARA "RQ" list. A substance designated an extremely hazardous substance pursuant to Section 302(a) of the SARA of 1986 shall have the reportable quantity as set by the act under Section 304(a)(2). If the reportable quantity under the federal act differs from the RQ listed for the same substance in Appendix A to this ordinance, the lowest RQ shall be the reportable quantity.

#### ~~§ 95.05 ADMINISTERING AGENCY.~~

~~The purpose of this ordinance is to establish a uniform county wide program throughout Louisville Metro for protection of the environment from releases of hazardous materials to be administered by existing governmental agencies. The Metropolitan Sewer District (MSD) shall serve as the lead agency in the administration of this ordinance.~~

§ 95.06 ~~NOTIFICATION TO FIRE COMMUNICATIONS BUREAU~~ NOTICE AND REPORTING REQUIREMENTS.

(A) Notice upon discovery.

1) Whenever a release (other than an authorized release) of any hazardous material in a reportable quantity occurs on any facilities of any kind, the ~~person~~ party in charge (or a responding fire, police, other governmental agency, or emergency medical service personnel), upon discovery or confirmation of such release shall immediately cause notice of the existence for such release, the circumstances of same, and the location thereof to be given to ~~the Fire Communications Bureau (FCB), or successor agency or subagency as identified within MetroSafe, by calling "9-1-1."~~

(a) Such notice is required when the circumstances and conditions on site are such that the individuals enumerated above either knew, or should have known, that a release occurred.

(b) The notice to MetroSafe required by this section shall serve as notification to all local agencies to which notification is required, and to the extent permitted under any valid Memorandum of Understanding, also shall serve as notice to the Kentucky Environmental and Public Protection Cabinet, or successor agency, and the Kentucky State Fire Marshal.

(B) ~~Emergency telephone number. The notice required by this section in Jefferson County Louisville Metro shall be given by telephoning "911" or such other emergency telephone number as may be designated. This one call will meet the requirement of notifying local agencies and to the extent permitted~~

~~under an existing memorandum of understanding will provide notice to the Kentucky Cabinet for Natural Resources and Fire Marshal.~~

~~(C)~~ (B) Duty to control release. The requirements of this section shall not be construed to forbid any ~~person~~ party on or about the facilities from using all diligence necessary to control such release prior to the notification to ~~the Fire Communications Bureau FCB MetroSafe~~, especially if such efforts may result in the containment of the release and/or the abatement of extreme hazard to the employees or the general public. Delays in reporting releases due to in-house notification of off-site owners/supervisors shall not be acceptable and may result in penalties.

~~(D)~~ (C) Air releases.

(1) Accidental air releases in excess of the reportable quantities listed in Appendix A or, if unlisted, as prescribed by Section 95.04 (releases that are required to be reported to state and federal authorities) shall be reported under the requirements of this section unless different reportable quantity has been established under an approved HMPC Plan for the particular facility.

(2) In order to insure compliance with the notice requirement of subsection 95.06(A), any ~~person~~ party required to prepare and submit an HMPC Plan for a facility, pursuant to Section 95.07, who possesses or stores at such facility hazardous materials that are a gas at standard temperature and pressure in quantities equal to or greater than the reportable quantity, shall maintain at the facility a list of such materials. Any ~~person~~ party required to maintain a list pursuant to this section may, in lieu thereof, incorporate such list in its HMPC

Plan. Any list maintained pursuant to this section shall, upon request, be made available at the facility to representatives of the ~~administering agency~~ Louisville Metro Health Department ("Metro Health"), Metropolitan Sewer District ("MSD"), or the Fire Chief, or designee, of the fire department or suburban fire district with jurisdiction ("Fire Chief").

~~(E)~~(D) Threatened release.

(1) Whenever a threatened release occurs, as defined in Section 95.03, the party in charge (or a responding fire, police, or other governmental agency, or emergency medical services personnel), upon discovery of such threatened release, shall immediately cause notice of the existence of such threatened release, the circumstances of same, and the location thereof to be given to ~~"911."~~ MetroSafe, by calling "9-1-1."

(2) Such notice is also required when the circumstances and conditions on-site are such that the ~~individuals~~ parties enumerated above either knew, or should have known, that the release or environmental emergency occurred.

(F) Duty to report to federal agencies. No statement contained in this section shall be construed to exempt or release any ~~person~~ party from any other notification or reporting procedure required by any federal agency.

§ 95.07 HAZARDOUS MATERIALS USE AND SPILL PREVENTION CONTROL PLAN.

(A) Applicability. The following ~~persons who~~ parties that use hazardous materials must prepare, submit to MSD, and maintain a “Louisville/Jefferson County Metro Hazardous Materials Use and Spill Prevention Control Plan,” ~~hereinafter referred to as the HMPC Plan~~:

(1) All federal, state, and local government entities in ~~Jefferson County which~~ Louisville Metro that use hazardous materials; and

(2) All of the following businesses or services in ~~Jefferson County which~~ Louisville Metro that use hazardous materials, as classified by the Standard Industrial Classification (SIC) code:

0782 Lawn and garden services

2011-3999 Manufacturing

4011-4953 Transportation, communication and public utilities

5043 Photograph equipment and supplies (wholesale trade)

5085 Industrial supplies (wholesale trade)

5161-5199 Specific categories in wholesale trade

5541 Gasoline service stations (retail trade)

7011-7218 Industrial and commercial launderers, etc. in services

7342 Disinfecting and exterminating services

7395 Photofinishing laboratories in services

7512 Passenger car rental in services

7513 Truck rental and leasing



7538-7549 Automotive repair shops and auto services in services

8062 General medical and surgical hospitals in services

8063 Psychiatric hospitals in services

8069 Specialty hospitals except psychiatric in services

(3) Those ~~persons~~ parties not covered in subsections 95.07(A)(1) or (2), above, who use hazardous materials may be required to submit a HMPC Plan if ~~the administering agency~~ Metro Health or MSD finds it necessary, in order to protect the public health and safety.

(4) ~~The administering agency~~ MSD shall not require an HMPC Plan, or amendments to an existing plan, for those hazardous materials added to this ordinance by adoption of the “extremely hazardous substances” list pursuant to 302(A) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) until such time as the reporting format under (SARA) and under this ordinance have been reconciled, ~~but in no event shall such plan be required prior to August 1, 1993.~~

(B) Exemptions from Plan filing requirements.

(1) ~~Persons who~~ Parties that handle agriculture chemicals in the ordinary course of agriculture operations other than warehousing or bulk storage of such chemicals for resale or commercial application.

(2) ~~Persons who~~ Parties that handle hazardous materials otherwise regulated only at temporary construction sites - those in existence for six months or less.

(3) ~~Persons who~~ Parties that handle materials only in conjunction with residential use of property for non-commercial purposes.

(4) Consumer products and foodstuffs packaged for distribution to and intended for use by the general public. This refers to ingredients used in production of foodstuffs which are regulated by the federal Food, Drug and Cosmetic Act as amended.

(5) Retail sale, however, where a portion of the retail sale is used for bulk storage is regulated.

(6) Liquor stores.

(7) Any other exemption based on specific application to ~~the administering agency~~ MSD, provided that such element, compound, mixture, solution or substance to be considered for exemption, when released into the environment will not present danger to the public health or welfare, or the environment, or to the employees of any ~~person~~ party or the general public.

(8) ~~Persons who~~ Parties that do not handle hazardous materials in quantities, provided that ~~the administering agency~~ MSD may require a plan under such conditions as set forth in subsection 95.07(A)(3) above.

(C) Requirements for HMPC Plan. ~~The administering agency~~ MSD shall provide forms with the necessary instructions and requirements for completing HMPC Plans in compliance with this ordinance. The HMPC Plan will include but not be limited to:

(1) Facility identification;

(2) Spill history;

(3) Identification of hazardous material (HM) storage, in-plant transfer, process and materials handling areas and hazardous material truck and rail car loading and unloading areas;

(4) Description of plant site runoff from areas described in subsection 95.07(C)(3), including in-place containment appurtenances (for example, dikes) and means of releasing rainwater from such areas;

(5) Other means of spill prevention, control and countermeasure of all listed hazardous materials, such as containment or detection equipment and absorbent materials;

(6) Provisions for the operation and maintenance of all items described in subsection 95.07(C)(5);

(7) Contingency plans, including spill notification procedures for both internal personnel as well as outside authorities, including MSD;

(8) Provisions for the training of personnel in the utilization of subsection 95.07(C)(7);

(9) Security provisions;

(10) Provisions for inspections, spill reports preparation, and records retention;

(11) Schedule (with actual dates or milestones) for plan elements yet to be implemented, with provisions for reporting progress to MSD;

(12) Provisions for plan review and amendment submission;

(13) Certification of plan by an officer of the company, or ~~his~~ written designee; however, any activity which can be defined as engineering or

the practice of engineering by KRS 322.010 shall be performed by a registered professional engineer licensed to practice in the Commonwealth unless otherwise exempted by KRS Chapter 322;

(14) For purposes of this section, one plan may be submitted by the owner of electrical equipment at multiple locations when such equipment contains materials used either as a lubricant, coolant, or insulation for the operation of such equipment; subsections 95.07(C)(3) and (4), above, shall not apply to single plans authorized under this ordinance.

(D) Amended reportable quantities. HMPC Plans submitted as part of an MSD Wastewater Discharge Permit may provide for amended reportable quantities for releases, provided that such amendments are approved by ~~the administering agency~~ Metro Health and MSD, and the requesting industry has a good safety record relating to hazardous materials use.

(E) Review and approval of plan. The HMPC Plan shall be reviewed by MSD and the Health Department, the fire department with jurisdiction, and any other local agency with appropriate authority; however, final administrative action on the HMPC Plan shall be taken by ~~the administering agency~~ MSD. Upon submission of the HMPC Plan, the ~~person~~ party submitting the plan shall be presumed to be in compliance with this section pending final review of the plan. HMPC Plans which do not provide necessary information or are otherwise deficient shall be rejected and returned to the ~~person~~ party submitting the plan for revision and resubmittal.

(F) Appeals. Any rejection or denial of approval of a HMPC Plan may be appealed to the Appeals and Overseers Board pursuant to Section 95.11.

(G) Updates, revisions, and changes. A new or modified HMPC Plan may be required and submitted to ~~the administering agency with jurisdiction~~ MSD when any ~~person~~ party institutes the use of a new process or change in its manufacturing or processing facilities or when there is a significant change in its existing operating or wastewater constituents or characteristics.

(H) Training and education programs.

(1) Each employer or employee who uses hazardous materials as herein defined, and who is required to prepare a HMPC Plan, shall be required to have an initial and ongoing safety and accident prevention training program for all such employees. This training and education program shall include, but not be limited to, appropriate work practices, protective measures, and emergency procedures. The details and frequency of the training program should be provided as part of the HMPC Plan for the facility as provided in subsection 95.07(C)(7).

(2) ~~The administering agency~~ MSD shall have the authority to require different frequencies of training for industries with frequent spills and/or spill histories.

#### § 95.08 INSPECTION AND INVESTIGATION.

(A) Inspections. ~~The administering agency~~ Metro Health, MSD and the Fire Chief each shall have the authority to conduct periodic inspections of any facilities for the purposes of ascertaining or causing to be corrected any condition

which may be a violation of this ordinance. Joint inspection shall be conducted where necessary for purposes of HMPC Plan review. Inspections shall be made during normal working hours.

(B) Investigations. When information that has been received for evidence indicates that an unreported release may have occurred on a property or facility, ~~the administering agency~~ Metro Health, MSD and the Fire Chief shall be allowed immediate access to the facility by company personnel to conduct a proper investigation. Admission under this provision shall be consistent with the company's safety procedures and incident protocols, ~~outlined in Annex X~~ as set forth in the Louisville Metro Emergency Operations Plan, Annex X, but shall not result in an unreasonable delay.

#### § 95.09 CONFIDENTIAL INFORMATION AND TRADE SECRETS.

(A) Information and data provided by any ~~person~~ party or obtained from any report, questionnaire, permit application, permit and monitoring program and from inspections shall not be made available to the public or any other governmental agency, unless required by law.

(B) (1) Upon submission of information in any form, it shall be the obligation of the submitter to separate all claimed confidential and trade secret material from any material subject to disclosure under the law.

(2) Any material that has been designated as confidential business information by the Kentucky ~~Natural Resources and Environmental and~~ Public Protection Cabinet, or successor agency, shall retain its confidential status

and shall not be subject to disclosure, in accordance with the Kentucky Open Records Act, KRS 61.870 et. seq.

(C) Any requests made under the law for information that has been designated by either the submitter or by the Commonwealth as containing confidential or trade secrets shall be brought to the attention of the ~~person~~ party requesting confidentiality of its trade secrets ~~by certified mail return receipt requested.~~ The notification shall advise the ~~person~~ party requesting confidentiality of the decision of ~~the administering agency~~ MSD regarding release of the confidential information in accordance with any applicable laws or regulations, including provision of fifteen days' notice to such party that the review for disclosure has been requested. ~~In no event will such confidential information be released until five days have elapsed from the date notice is sent by registered mail.~~

(D) (1) If in response to an Open Records request made of Metro Government, 72 hours after receipt of notification, the ~~person~~ party requesting confidentiality of its trade secrets shall have the burden to make a claim of confidentiality within the period specified in the notification, or prior to the period of time in which the request must, by law, be answered, or otherwise to initiate appropriate actions at law ~~or otherwise~~ to protect its confidential or trade secrets from disclosure, and must demonstrate that public disclosure of confidential or trade secrets is likely to cause substantial harm to this competitive position.

(2) If a claim of confidentiality is made, and legal counsel for Metro Government exercises this claim against his/her articulated position to that

party that such information is releasable under the Kentucky Open Records Act, the party who exercised the right to claim the exemption from disclosure shall be responsible for the defense of this position, both financially and substantively.

(E) Any ~~individual who~~ party that releases information containing confidential or trade secrets in violation of the law or this ordinance shall be subject to disciplinary action by his/her employer for malfeasance, misfeasance, and willful neglect of official duties and may further be guilty of misuse of confidential information under KRS 522.040. This subsection shall not apply to any party responding as an agent of Metro Government to an official Open Records request made in accordance with KRS 61.870, et. seq.

(F) The provisions of this section shall in no way prohibit or limit the exchange of information, confidential or otherwise, between public agencies when the exchange is serving a legitimate governmental need or is necessary in the performance of a legitimate governmental need or is necessary in the performance of a legitimate government function.

(G) MSD shall be the repository for all trade secret information, and shall respond to any Open Records requests made with regard to HMPC Plans.

#### § 95.10 ENFORCEMENT; NOTICE OF VIOLATION.

(A) Primary responsibility. MSD shall have primary responsibility for enforcement of the provisions of this ordinance.

(B) Notice. Upon notification or discovery of any violation of the provisions of this ordinance, ~~the administering agency~~ MSD shall immediately



investigate the site upon which the violation is located. ~~The administering agency will be the lead enforcement agency for violations of this ordinance.~~ If a violation exists, or a release has occurred, a notice describing the violation shall be served upon the ~~person who~~ party that is responsible for the facilities upon which the violation has occurred, if the identity of the ~~person~~ party is known. The notice shall also include the following if applicable:

(1) A statement that the situation must be abated within the period of time prescribed by ~~the administering agency~~ Metro Health, giving the ~~person~~ party responsible for the release the option to initiate cleanup and disposal, provided that no unreasonable delay or damage to the public is the result thereof.

(2) A statement that if the situation is not remedied within the prescribed period of time, ~~the administering agency with jurisdiction~~ Metro Health, MSD, the Fire Chief, or another Metro Governmental agency authorized to do so may proceed to correct the violation.

(3) A statement that the ~~person~~ party shall be liable for ~~any~~ costs occurred by public agencies associated with their releases ~~except for those costs that are associated with a normal emergency response.~~

(4) A statement that after the ~~administering agency~~ has corrected the violation has been corrected, or the release has been remediated, a bill shall be sent charging the ~~person~~ party the amount of costs and expenses incurred by the governmental agency ~~in correcting the violation.~~

(5) A statement that penalties may be levied for violations that have occurred.

(C) Governmental response. In cases where the identity of a ~~person~~ who party that is responsible for facilities upon which a violation has occurred is not known at the time a violation is reported, ~~the~~ Metro Government, or any governmental agency with jurisdiction in ~~Jefferson County~~ Louisville Metro, may take reasonable steps to abate any problem, and may take reasonable steps to clean up the area affected to assure continuing safety of the public and the environment. When the identity of the ~~person~~ party responsible for the facility is determined, a bill shall be sent to the ~~person~~ party for the costs for correcting the violation, or remediating the release, according to the provisions of subsection 95.10(B).

(D) Injunctive relief. ~~The administering agency~~ MSD is empowered to seek injunctive relief for violations of this ordinance should other means prove ineffective and a threat to public health and safety exists.

#### § 95.11 APPEALS AND OVERSEER BOARD.

(A) Purpose. An Appeals and Overseers Board, composed ~~of~~ of representatives of industry, regulatory agencies and the general public, appointed by the Mayor of Louisville Metro Government, shall be established to insure that an appeal is available to those ~~persons~~ parties aggrieved by an action of ~~the administering agency~~ MSD regarding the adequacy of a HMPC Plan; to those ~~persons~~ parties fined or penalized pursuant to this ordinance; and to

coordinate and integrate the policies and procedures of the regulating agencies and ~~person~~ parties related to the HMPC Plan. Any recommendation of the Appeals and Overseers Board shall be advisory only and shall not be binding in any manner whatsoever upon ~~the Board of the Administering Agency~~ MSD.

(B) Appeal. The Board, in hearing an appeal, shall recommend to ~~the administering agency~~ MSD that the agency's action be modified, upheld, or dismissed or that a fine or penalty levied upon a ~~person~~ party for violation of any provision of this ordinance be set aside, modified or left intact. The Board, upon an HMPC Plan appeal, may recommend to ~~the administering agency~~ MSD exemptions or modifications in the content of the HMPC Plan and requirements for reporting hazardous materials releases, provided that such exemption or modification is based on the preventive physical aspects of the facility, including containment structures and automatic monitors, and the recognized and documented good performance of the industry in handling hazardous materials.

(C) Composition. The Board shall be composed of representatives of industry, regulatory agencies and the general public not to exceed nine members. The Mayor of Louisville Metro ~~Government~~ shall appoint nine members, four of whom shall be representatives of regulated industry appointed from a list of at least ten names submitted by Greater Louisville, Inc.; three of whom shall be representatives of regulatory agencies; and two of whom shall be representatives of the general public. A simple majority of the Board shall constitute a quorum. The Appeals and Overseers Board shall function according to bylaws developed by the Board.

#### § 95.12 AFFIRMATIVE DEFENSE.

It shall be an affirmative defense to any enforcement action other than an action for violation of Section 95.06, including the recovery of cleanup costs pursuant to this ordinance if a ~~person~~ party can prove that a release of hazardous materials was caused solely by an act of God, an act of war, negligence on the part of the Metro Government, or an act or omission of a third party, or any combination of the foregoing clauses.

#### § 95.13 FEES.

Fees shall be imposed for HMPC Plan review or approval, the revenues of which shall cover only the costs of HMPC Plan review and approval. ~~The administering agency~~ MSD will set and collect fees. The fee schedule shall be uniform for all administering agencies.

#### § 95.14 DISCLAIMER OF LIABILITY.

This ordinance shall not create liability on the part of ~~the administering agency~~ any Louisville Metro agency, MSD, or suburban fire district for any damages that result from reliance on the ordinance or any administrative decision lawfully made thereunder. All ~~persons~~ parties are advised to determine to their own satisfaction the level of protection, in addition to that required by this ordinance, necessary or desirable to ensure that there is no unauthorized release of hazardous materials.

§ 95.98 SEVERABILITY.

If any provision of this chapter as now or later amended or its application to any ~~person~~ party or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

§ 95.99 PENALTY.

(A) Amount exceeding reportable quantity. ~~The person~~ Any party responsible for a hazardous material release in an amount exceeding the reportable quantity may be fined not more than \$1,000, if the release is not an authorized release, and if the release involved willful violations, negligence, or repeated spills under similar conditions and where a significant quantity of hazardous material is involved taking into account real or potential damage to the environment and threat to the public health. Every incident giving rise to such a release shall constitute a separate offense; however, no ~~person~~ party shall be held responsible for more than one violation per day where the violations occur at the same facility and are causally related.

(B) Failure to notify ~~fire communications bureau~~ MetroSafe. ~~The person~~ Any party who fails to notify the ~~Fire Communication Bureau~~ FCB MetroSafe as required by Section 95.06 may be fined not more than \$5,000.

(C) Any provision other than notification. ~~The person~~ Any party who otherwise violates any provision of this ordinance other than Section 95.06,

including failure to comply with an HMPC Plan, shall be fined ~~not more than \$100~~ up to \$10,000. Every incident giving rise to such a violation shall constitute a separate offense; however, no ~~person~~ party shall be held responsible for more than one violation per day where the violations occur at the same facility and are causally related.

(D) Administrative fines. Any ~~person~~ party violating any of the provisions of this ordinance shall, subject to the affirmative defenses set forth in Section 95.12, become liable civilly to the Metro Government, political subdivisions thereof, or fire protection districts for any expense, loss, or damage caused to the government, political subdivision, or fire protection districts by reason of such violation, including but not limited to any cleanup, evacuation, administrative or other expenses, and legal expenses.

(E) Violation of MSD Wastewater Discharge regulations. Any ~~person~~ party ~~who~~ that violates any provision of the MSD Wastewater Discharge Regulations, requirements, or conditions set forth in permits duly issued, or ~~who~~ that discharges wastewater which cause pollution, or violates any cease and desist order, prohibition, discharge limitation, natural standard or performance, pretreatment, or toxicity standard may also be ~~liable civilly to liabilities~~ civilly liable for penalties imposed by the Metropolitan Sewer District. The civil liability may be in a sum not to exceed ~~\$10,000~~ \$32,500 for each violation. Each incident giving rise to a violation of these sections shall constitute a separate offense; however, no ~~person~~ party shall be held responsible for more than one violation per day where the violation occurs at the same facility and are causally related.

(F) Penalties imposed pursuant to legislative authority. Any penalties imposed under this section shall be levied by ~~the administering agency with jurisdiction~~ MSD, pursuant to its legislative authority. ~~MSD shall adopt policies with regard to the use of revenues obtained through levy of any fines under the provisions of this ordinance.~~

## APPENDIX A

### 1. ADOPTION BY REFERENCE.

(A) The “Summary of the Hazardous Materials Ordinance and Listing of Hazardous Materials (Appendix A),” and all amendments thereto, attached to Ord. 17-1993, adopted and effective 7-7-1993, are hereby adopted by reference and incorporated into this Code of Ordinances, as if fully set forth herein.

(B) Copies of Appendix A are available for public inspection during normal hours at the office of the ~~City~~ Metro Council Clerk.

**SECTION II.** This Ordinance shall take effect upon its passage and approval.

\_\_\_\_\_  
Kathleen J. Herron  
Metro Council Clerk

\_\_\_\_\_  
Dr. Barbara E. Shanklin  
President of the Council

\_\_\_\_\_  
Jerry E. Abramson  
Mayor

\_\_\_\_\_  
Approval Date

**APPROVED AS TO FORM AND LEGALITY:**

Irv Maze  
Jefferson County Attorney

BY: \_\_\_\_\_



Ordinance No. \_\_\_\_\_, Series 2005

**AN ORDINANCE AMENDING AND RE-ENACTING  
CHAPTER 95 OF THE LOUISVILLE METRO CODE  
OF ORDINANCES RELATING TO HAZARDOUS  
MATERIALS (AS AMENDED).**

**Sponsored By: Council Member  
Cheri Bryant Hamilton**

**BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE  
LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT [THE COUNCIL]  
AS FOLLOWS:**

**SECTION I.** Pursuant to KRS 67C.115(2), Chapter 95 of the Louisville Metro Code of Ordinances, is hereby amended and reenacted as follows:

**§ 95.01 PURPOSE.**

The purpose of this ordinance is for the protection of public health and safety in ~~Jefferson County~~ Louisville Metro, through prevention and control of hazardous materials incidents and releases, and to require the timely reporting of releases thereto.

**§ 95.02 APPLICABILITY.**

This ordinance shall apply to all ~~persons~~ parties who manufacture, use, or store hazardous materials in quantities prescribed by this ordinance, and as defined herein, within ~~Jefferson County~~ Louisville Metro.

## § 95.03 DEFINITIONS.

For the purpose of this ordinance, the following definitions shall apply, unless the context clearly indicates or requires a different meaning.

AUTHORIZED RELEASE. See RELEASE, AUTHORIZED.

BLUE LINE STREAM. Those streams, creeks, ditches or other waterways which appear on a USGS 7-1/2 minute quadrangle map, shown by a blue line, or other comparable streams, creeks, ditches, or waterways which do not appear merely because of the date of compilation of the USGS map.

CONSUMER PRODUCT. Any tangible personal property which is distributed in commerce, and which is normally used for personal, family, or household purposes, including any such property intended to be attached to, or installed in any real property, without regard to whether it is so attached or installed.

EMPLOYEE. Any person who works with or without compensation in a workplace.

EMPLOYER. Any person, firm, corporation, partnership, association, government agency, or other entity engaged in a business, or in providing services, that has employees.

ENVIRONMENT. The navigable waters of the United States and any other surface water, ground water, drinking water supply, soil source, subsurface strata, impervious surface - either indoors or outdoors, storm sewer, or publicly or privately-owned treatment works (other than those handling only wastewater generated at a facility) within boundaries of ~~Jefferson County~~ Louisville Metro.

ENVIRONMENT shall include air only for purposes of reporting releases pursuant to Section ~~95.06~~ 95.05(A).

#### FACILITY.

(1) Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly-owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(2) Any site or area where a hazardous material has been deposited, stored, disposed of, or placed or otherwise come to be located, but does not include any consumer product in consumer use, or any vessel.

#### HAZARDOUS MATERIALS.

(1) Any substance designated pursuant to Section 311(b)(2)(a) of the Federal Water Pollution Control Act.

(2) Any element, compound, mixture, solution, or substance designated by the U.S. Environment Protection Agency (EPA) pursuant to the Comprehensive Environment Response, Compensation, and Liability Act of 1980, Section 102 (CERCLA).

(3) Any hazardous waste having the characteristics identified under, or listed pursuant to Section 3001 of the Solid Waste Disposal Act (commonly known as the Resource Conservation and Recovery Act or RCRA), but not including any waste the regulation of which, under the Solid Waste Disposal Act, has been suspended by ~~the~~ an Act of Congress.

(4) Any toxic pollutant listed under Section 307(a) of the Federal Water Pollution Control Act.

(5) Any hazardous air pollutant listed under Section 112 of the Clean Air Act.

(6) Any imminently-hazardous chemical substance or mixture, with respect to which the Administrator of the U.S. Environmental Protection Agency has taken action pursuant to Section 7 of the Toxic Substances Control Act.

(7) Any substance designated an extremely hazardous substance pursuant to Section 302(a) of the Superfund Amendments and Reauthorization Act of 1986 (SARA). The term does include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs of this definition, and the term does include, if stored, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas, or synthetic gas.) Hazardous materials shall include those contained in the "List of Hazardous Materials," which is included ~~in an~~ Appendix A to this ordinance, radioactive materials and isotopes, and explosives. Hazardous materials shall not include household wastes and other materials excluded by 40 CFR 261.4. ~~Hazardous materials shall not include any material which is a gas under standard temperature pressure except for purposes of reporting of releases pursuant to subsections 95.06(A) and (D).~~

HMPC - Shall refer to the Louisville Metro Hazardous Materials Use and Spill Prevention Control Plan, as set forth herein.

~~IMPERVIOUS SURFACE. A surface outside of a building which substantially reduces the rate of infiltration of liquids into the earth, including, but not limited to, asphalt and concrete roadways, walks, and parking lots, but not including a closed containment vessel.~~

MANUFACTURE. To produce, import, or compound a hazardous material, whether produced as an end product or by-product in the production of another substance. The term shall also include hazardous substances that remain in end products as impurities.

NAVIGABLE WATER. The waters of the United States, including the territorial seas.

NORMAL APPLICATION OF PESTICIDES. Application pursuant to the label directions for application of a pesticide product registered under Section 30 or Section 24 of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 135 et seq. (FIFRA), or pursuant to the terms and conditions of an experimental-use permit issued under Section 5 of FIFRA, or pursuant to an exemption granted under Section 18 of FIFRA.

OIL. Any kind or in any form, including but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

~~PERSON~~ PARTY. Any individual, trust, firm, company, society, corporation, joint-stock company, partnership, consortium, association, cooperative, joint venture, ~~Metro Government, city, county, city, county and Metro~~

~~Government~~ special district, the state, or any department, or agency, or political subdivision thereof, United States Government, or other commercial or legal entities.

RELEASE. Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excludes:

(1) With respect to a claim which such ~~persons~~ parties may assert against the employer of such ~~persons~~ parties as provided by CERCLA regulations, any release which results in exposure to ~~persons~~ parties solely within a workplace;

(2) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; and

(3) The normal application of fertilizer and pesticides.

RELEASE, AUTHORIZED.

(1) A release which is federally permitted under 42 U.S.C. 9601(10);

(2) A release to waters of the United States or adjoining shorelines which is exempt from notification under 40 CFR 117.11 through 40 CFR 117.14;

(3) The introduction of any pollutant into a publicly-owned treatment works, which is not in violation of applicable pretreatment requirements or other regulations controlling the introduction of pollutants into the publicly owned treatment works; and

(4) Any release which is specifically authorized by the administering agency after review of the HMPC Plan submitted pursuant to Section ~~95.07~~ 95.06, provided that the HMPC Plan is part of an approved permit.

REPORTABLE QUANTITY. That quantity, as set forth in Section 95.04.

STORE. To deposit or place a substance within ~~the city or county~~ Louisville Metro for a period of 10 days or more, provided that such substance is not otherwise in transit.

THREATENED RELEASE. A circumstance which presents a substantial threat of a release only as a result of a transportation incident. A threatened release would be evidenced by the puncturing of the inner or outer shell of the container structure, whether or not an actual release occurs.

USE. To store, maintain, treat, process, handle, generate, dispose of, or otherwise manage. USE shall include any mode of transportation other than on-site transportation.

VESSEL. Every description of watercraft or other artificial contrivance used or capable of being used as a means of transportation on water.

#### § 95.04 DETERMINATION OF REPORTABLE QUANTITIES.

(A) Listed hazardous materials. The quantity in the column "RQ" for each hazardous material in Appendix A is the reportable quantity for that material. The Appendix A list (40 CFR Part 302) will be automatically updated at such times as EPA publishes a new list. "Reportable Quantities" may be adjusted higher or lower as provided by subsections ~~95.04(D) and (G)~~ (F), herein.

(B) Unlisted hazardous materials. Unlisted hazardous wastes designated as hazardous materials have the reportable quantity of 100 pounds, except for those unlisted hazardous wastes exhibiting the characteristics of toxicity identified in 40 CFR 261.24. Unlisted hazardous wastes which exhibit toxicity have the reportable quantities listed in Appendix A for the contaminant on which the characteristic of toxicity is based. If an unlisted hazardous waste exhibits toxicity on the basis of more than one contaminant, the reportable quantity for that waste shall be the lowest of the reportable quantities listed in Appendix A for those contaminants. If an unlisted hazardous waste exhibits the characteristic of toxicity, and either characteristics ignitability or corrosivity or reactivity, the reportable quantity shall be the lowest of the applicable reportable quantities.

(C) Oil.

(1) The reportable quantity for releases of oil to waters of the United States or adjoining shoreline is any quantity which violates applicable water quality standards, or causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or causes a sludge or emulsion to be deposited beneath the surface of the water, or upon adjoining shorelines.

(2) The reportable quantity for releases of oil to the environment other than releases to waters of the U.S. and adjoining shorelines is 56 gallons.

(3) Notwithstanding any other provision of this section, a release of oil from a properly functioning vessel engine shall not be deemed to be in



reportable quantity; this provision shall not be applicable to oil accumulated in a vessel's bilges.

~~(D) Higher reportable quantity. Notwithstanding any other provision of this section, the administering agency, after review of the HMPC Plan submitted pursuant to Section 95.0, may designate a reportable quantity for a hazardous material in excess of the quantity determined under this section if the administering agency determines that the higher reportable quantity is consistent with the purposes and objectives of this ordinance.~~

~~(E)~~ Release of hazardous materials to sanitary sewer system. Notwithstanding any other provision of this section, any release of a hazardous material to a sanitary sewer system, storm sewer system, or blue line stream, or tributary to blue line stream, which is prohibited under applicable pretreatment or other regulations governing such discharges shall be deemed to be discharged in a reportable quantity.

~~(F)~~(E) Component hazardous materials release.

(1) A release of a mixture or solution, of which one hazardous material is a component, shall be considered to be a release in a reportable quantity only where the component hazardous material of the mixture or solution is released in a quantity equal to or greater than its reportable quantity.

(2) A release of a mixture or solution of two or more hazardous materials which share the same characteristics of ignitability or corrosivity or reactivity and toxicity shall be considered a release in a reportable quantity equal to or greater than the reportable quantity of any of the hazardous materials in the

mixture or solution. The quantity of non-hazardous materials shall not be included for purposes of reporting.

~~(G)~~ (F) Adjustments to reportable quantity list. The Appeals and Overseers Board established under Section 95.11, upon recommendation of a local regulatory agency, or upon request for review by a regulated hazardous materials user, may adjust upward or downward the reportable quantity on the most current applicable list.

~~(H)~~ (G) SARA "RQ" list. A substance designated an extremely hazardous substance pursuant to Section 302(a) of the SARA of 1986 shall have the reportable quantity as set by the act under Section 304(a)(2). If the reportable quantity under the federal act differs from the RQ listed for the same substance in Appendix A to this ordinance, the lowest RQ shall be the reportable quantity.

#### ~~§ 95.05 ADMINISTERING AGENCY.~~

~~The purpose of this ordinance is to establish a uniform county wide program throughout Louisville Metro for protection of the environment from releases of hazardous materials to be administered by existing governmental agencies. The Metropolitan Sewer District (MSD) shall serve as the lead agency in the administration of this ordinance.~~

~~§ 95.06~~ 95.05 ~~NOTIFICATION TO FIRE COMMUNICATIONS BUREAU~~  
NOTICE AND REPORTING REQUIREMENTS.

(A) Notice upon discovery.

1) Whenever a release (other than an authorized release) of any hazardous material in a reportable quantity occurs on any facilities of any kind, the ~~person~~ party in charge (or a responding fire, police, other governmental agency, or emergency medical service personnel), upon discovery or confirmation of such release shall immediately cause notice of the existence for such release, the circumstances of same, and the location thereof to be given to ~~the Fire Communications Bureau (FCB), or successor agency or subagency as identified within MetroSafe, by calling "9-1-1."~~

(a) Such notice is required when the circumstances and conditions on site are such that the individuals enumerated above either knew, or should have known, that a release occurred.

(b) The notice to MetroSafe required by this section shall serve as notification to all local agencies to which notification is required, and to the extent permitted under any valid Memorandum of Understanding, also shall serve as notice to the Kentucky Environmental and Public Protection Cabinet, or successor agency, and the Kentucky State Fire Marshal.

(B) ~~Emergency telephone number. The notice required by this section in Jefferson County Louisville Metro shall be given by telephoning "911" or such other emergency telephone number as may be designated. This one call will meet the requirement of notifying local agencies and to the extent permitted~~

~~under an existing memorandum of understanding will provide notice to the Kentucky Cabinet for Natural Resources and Fire Marshal.~~

~~(C)~~ (B) Duty to control release. The requirements of this section shall not be construed to forbid any ~~person~~ party on or about the facilities from using all diligence necessary to control such release prior to the notification to ~~the Fire Communications Bureau FCB MetroSafe~~, especially if such efforts may result in the containment of the release and/or the abatement of extreme hazard to the employees or the general public. Delays in reporting releases due to in-house notification of off-site owners/supervisors shall not be acceptable and may result in penalties.

~~(D)~~ (C) Air releases.

(1) Accidental air releases in excess of the reportable quantities listed in Appendix A or, if unlisted, as prescribed by Section 95.04 (releases that are required to be reported to state and federal authorities) shall be reported under the requirements of this section unless different reportable quantity has been established under an approved HMPC Plan for the particular facility.

(2) In order to insure compliance with the notice requirement of subsection 95.06(A), any ~~person~~ party required to prepare and submit an HMPC Plan for a facility, pursuant to Section ~~95.07~~ 95.06, who possesses or stores at such facility hazardous materials that are a gas at standard temperature and pressure in quantities equal to or greater than the reportable quantity, shall maintain at the facility a list of such materials. Any ~~person~~ party required to maintain a list pursuant to this section may, in lieu thereof, incorporate such list in

its HMPC Plan. Any list maintained pursuant to this section shall, upon request, be made available at the facility to representatives of the ~~administering agency~~ Louisville Metro Health Department ("Metro Health"), Metropolitan Sewer District ("MSD"), or the Fire Chief, or designee, of the fire department or suburban fire district with jurisdiction ("Fire Chief").

~~(E)~~(D) Threatened release.

(1) Whenever a threatened release occurs, as defined in Section 95.03, the party in charge (or a responding fire, police, or other governmental agency, or emergency medical services personnel), upon discovery of such threatened release, shall immediately cause notice of the existence of such threatened release, the circumstances of same, and the location thereof to be given to ~~"911."~~ MetroSafe, by calling "9-1-1."

(2) Such notice is also required when the circumstances and conditions on-site are such that the ~~individuals~~ parties enumerated above either knew, or should have known, that the release or environmental emergency occurred.

(F) Duty to report to federal agencies. No statement contained in this section shall be construed to exempt or release any ~~person~~ party from any other notification or reporting procedure required by any federal agency.

§ ~~95-07~~ 95.06 HAZARDOUS MATERIALS USE AND SPILL PREVENTION  
CONTROL PLAN.

(A) Applicability. The following ~~persons who~~ parties that use hazardous materials must prepare, submit to MSD, and maintain a “Louisville/Jefferson County Metro Hazardous Materials Use and Spill Prevention Control Plan,” ~~hereinafter referred to as the HMPC Plan~~:

(1) All federal, state, and local government entities in ~~Jefferson County which~~ Louisville Metro that use hazardous materials; and

(2) All of the following businesses or services in ~~Jefferson County which~~ Louisville Metro that use hazardous materials, as classified by the Standard Industrial Classification (SIC) code:

0782 Lawn and garden services

2011-3999 Manufacturing

4011-4953 Transportation, communication and public utilities

5043 Photograph equipment and supplies (wholesale trade)

5085 Industrial supplies (wholesale trade)

5161-5199 Specific categories in wholesale trade

5541 Gasoline service stations (retail trade)

7011-7218 Industrial and commercial launderers, etc. in services

7342 Disinfecting and exterminating services

7395 Photofinishing laboratories in services

7512 Passenger car rental in services

7513 Truck rental and leasing

7538-7549 Automotive repair shops and auto services in services

8062 General medical and surgical hospitals in services

8063 Psychiatric hospitals in services

8069 Specialty hospitals except psychiatric in services

(3) Those ~~persons~~ parties not covered in subsections ~~95.07~~ 95.06(A)(1) or (2), above, who use hazardous materials may be required to submit a HMPC Plan if ~~the administering agency~~ Metro Health or MSD finds it necessary, in order to protect the public health and safety.

(4) ~~The administering agency~~ MSD shall not require an HMPC Plan, or amendments to an existing plan, for those hazardous materials added to this ordinance by adoption of the “extremely hazardous substances” list pursuant to 302(A) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) until such time as the reporting format under (SARA) and under this ordinance have been reconciled, ~~but in no event shall such plan be required prior to August 1, 1993.~~

(B) Exemptions from Plan filing requirements.

(1) ~~Persons who~~ Parties that handle agriculture chemicals in the ordinary course of agriculture operations other than warehousing or bulk storage of such chemicals for resale or commercial application.

(2) ~~Persons who~~ Parties that handle hazardous materials otherwise regulated only at temporary construction sites - those in existence for six months or less.

(3) ~~Persons who~~ Parties that handle materials only in conjunction with residential use of property for non-commercial purposes.

(4) Consumer products and foodstuffs packaged for distribution to and intended for use by the general public. This refers to ingredients used in production of foodstuffs which are regulated by the federal Food, Drug and Cosmetic Act as amended.

(5) Retail sale, however, where a portion of the retail sale is used for bulk storage is regulated.

(6) Liquor stores.

(7) Any other exemption based on specific application to ~~the administering agency~~ MSD, provided that such element, compound, mixture, solution or substance to be considered for exemption, when released into the environment will not present danger to the public health or welfare, or the environment, or to the employees of any ~~person~~ party or the general public.

(8) ~~Persons who~~ Parties that do not handle hazardous materials in quantities, provided that ~~the administering agency~~ MSD may require a plan under such conditions as set forth in subsection ~~95.07~~ 95.06(A)(3) above.

(C) Requirements for HMPC Plan. ~~The administering agency~~ MSD shall provide forms with the necessary instructions and requirements for completing HMPC Plans in compliance with this ordinance. The HMPC Plan will include but not be limited to:

- (1) Facility identification;
- (2) Spill history;



(3) Identification of hazardous material (HM) storage, in-plant transfer, process and materials handling areas and hazardous material truck and rail car loading and unloading areas;

(4) Description of plant site runoff from areas described in subsection ~~95.07~~ 95.06(C)(3), including in-place containment appurtenances (for example, dikes) and means of releasing rainwater from such areas;

(5) Other means of spill prevention, control and countermeasure of all listed hazardous materials, such as containment or detection equipment and absorbent materials;

(6) Provisions for the operation and maintenance of all items described in subsection ~~95.07~~ 95.06(C)(5);

(7) Contingency plans, including spill notification procedures for both internal personnel as well as outside authorities, including MSD;

(8) Provisions for the training of personnel in the utilization of subsection ~~95.07~~ 95.06(C)(7);

(9) Security provisions;

(10) Provisions for inspections, spill reports preparation, and records retention;

(11) Schedule (with actual dates or milestones) for plan elements yet to be implemented, with provisions for reporting progress to MSD;

(12) Provisions for plan review and amendment submission;

(13) Certification of plan by an officer of the company, or ~~his~~ written designee; however, any activity which can be defined as engineering or

the practice of engineering by KRS 322.010 shall be performed by a registered professional engineer licensed to practice in the Commonwealth unless otherwise exempted by KRS Chapter 322;

(14) For purposes of this section, one plan may be submitted by the owner of electrical equipment at multiple locations when such equipment contains materials used either as a lubricant, coolant, or insulation for the operation of such equipment; subsections ~~95.07~~ 95.06(C)(3) and (4), above, shall not apply to single plans authorized under this ordinance.

(D) Amended reportable quantities. HMPC Plans submitted as part of an MSD Wastewater Discharge Permit may provide for amended reportable quantities for releases, provided that such amendments are approved by ~~the administering agency~~ Metro Health and MSD, and the requesting industry has a good safety record relating to hazardous materials use.

(E) Review and approval of plan. The HMPC Plan shall be reviewed by MSD and the Health Department, the fire department with jurisdiction, and any other local agency with appropriate authority; however, final administrative action on the HMPC Plan shall be taken by ~~the administering agency~~ MSD. Upon submission of the HMPC Plan, the ~~person~~ party submitting the plan shall be presumed to be in compliance with this section pending final review of the plan. HMPC Plans which do not provide necessary information or are otherwise deficient shall be rejected and returned to the ~~person~~ party submitting the plan for revision and resubmittal.

(F) Appeals. Any rejection or denial of approval of a HMPC Plan may be appealed to the Appeals and Overseers Board pursuant to Section 95.11.

(G) Updates, revisions, and changes. A new or modified HMPC Plan may be required and submitted to ~~the administering agency with jurisdiction~~ MSD when any ~~person~~ party institutes the use of a new process or change in its manufacturing or processing facilities or when there is a significant change in its existing operating or wastewater constituents or characteristics.

(H) Training and education programs.

(1) Each employer or employee who uses hazardous materials as herein defined, and who is required to prepare a HMPC Plan, shall be required to have an initial and ongoing safety and accident prevention training program for all such employees. This training and education program shall include, but not be limited to, appropriate work practices, protective measures, and emergency procedures. The details and frequency of the training program should be provided as part of the HMPC Plan for the facility as provided in subsection ~~95.07~~ 95.06(C)(7).

(2) ~~The administering agency~~ MSD shall have the authority to require different frequencies of training for industries with frequent spills and/or spill histories.

~~§ 95.08~~ **95.07** INSPECTION AND INVESTIGATION.

(A) Inspections. ~~The administering agency~~ Metro Health, MSD and the Fire Chief each shall have the authority to conduct periodic inspections of any facilities for the purposes of ascertaining or causing to be corrected any condition

which may be a violation of this ordinance. Joint inspection shall be conducted where necessary for purposes of HMPC Plan review. Inspections shall be made during normal working hours.

(B) Investigations. When information that has been received for evidence indicates that an unreported release may have occurred on a property or facility, ~~the administering agency~~ Metro Health, MSD and the Fire Chief shall be allowed immediate access to the facility by company personnel to conduct a proper investigation. Admission under this provision shall be consistent with the company's safety procedures and incident protocols, ~~outlined in Annex Q~~ as set forth in the Louisville Metro Emergency Operations Plan, Annex Q but shall not result in an unreasonable delay.

§ ~~95.09~~ **95.08** CONFIDENTIAL INFORMATION AND TRADE SECRETS.

(A) Information and data provided by any ~~person~~ party or obtained from any report, questionnaire, permit application, permit and monitoring program and from inspections shall not be made available to the public or any other governmental agency, unless required by law.

(B) (1) Upon submission of information in any form, it shall be the obligation of the submitter to separate all claimed confidential and trade secret material from any material subject to disclosure under the law.

(2) Any material that has been designated as confidential business information by the Kentucky ~~Natural Resources and Environmental and~~ Public Protection Cabinet, or successor agency, shall retain its confidential status

and shall not be subject to disclosure, in accordance with the Kentucky Open Records Act, KRS 61.870 et. seq.

(C) Any requests made under the law for information that has been designated by either the submitter or by the Commonwealth as containing confidential or trade secrets shall be brought to the attention of the ~~person~~ party requesting confidentiality of its trade secrets ~~by certified mail return receipt requested.~~ The notification shall advise the ~~person~~ party requesting confidentiality of the decision of ~~the administering agency~~ MSD regarding release of the confidential information in accordance with any applicable laws or regulations, including provision of fifteen days' notice to such party that the review for disclosure has been requested. ~~In no event will such confidential information be released until five days have elapsed from the date notice is sent by registered mail.~~

(D) (1) If in response to an Open Records request made of Metro Government, 72 hours after receipt of notification, the ~~person~~ party requesting confidentiality of its trade secrets shall have the burden to make a claim of confidentiality within the period specified in the notification, or prior to the period of time in which the request must, by law, be answered, or otherwise to initiate appropriate actions at law ~~or otherwise~~ to protect its confidential or trade secrets from disclosure, and must demonstrate that public disclosure of confidential or trade secrets is likely to cause substantial harm to this competitive position.

(2) If a claim of confidentiality is made, and legal counsel for Metro Government exercises this claim against his/her articulated position to that

party that such information is releasable under the Kentucky Open Records Act, the party who exercised the right to claim the exemption from disclosure shall be responsible for the defense of this position, both financially and substantively.

(E) Any ~~individual who~~ party that releases information containing confidential or trade secrets in violation of the law or this ordinance shall be subject to disciplinary action by his/her employer for malfeasance, misfeasance, and willful neglect of official duties and may further be guilty of misuse of confidential information under KRS 522.040. This subsection shall not apply to any party responding as an agent of Metro Government to an official Open Records request made in accordance with KRS 61.870, et. seq.

(F) The provisions of this section shall in no way prohibit or limit the exchange of information, confidential or otherwise, between public agencies when the exchange is serving a legitimate governmental need or is necessary in the performance of a legitimate governmental need or is necessary in the performance of a legitimate government function.

(G) MSD shall be the repository for all trade secret information, and shall respond to any Open Records requests made with regard to HMPC Plans.

#### § 95.09 EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY REPORTING REQUIREMENTS

A) Those facilities required by the Occupational Safety and Health Act of 1970, and any regulations promulgated thereunder to submit annually an emergency

and hazardous chemical inventory form shall be subject to the reporting requirements of this subsection.

(B)(1) Any facility that reports Tier II information to the Louisville Metro Emergency Planning Committee (EPC), as set forth in 42 U.S.C. 11022, shall be required to use the electronic reporting software specified by that agency, which shall be set forth in its policies as they are adopted and/or revised.

(2) Such electronic reporting software that is utilized by the EPC shall be provided by the U.S. Environmental Protection Agency and available to facility owners and operators directly from that agency.

#### § 95.10 ENFORCEMENT; NOTICE OF VIOLATION.

(A) Primary responsibility. MSD shall have primary responsibility for enforcement of the provisions of this ordinance.

(B) Notice. Upon notification or discovery of any violation of the provisions of this ordinance, ~~the administering agency~~ MSD shall immediately investigate the site upon which the violation is located. ~~The administering agency will be the lead enforcement agency for violations of this ordinance.~~ If a violation exists, or a release has occurred, a notice describing the violation shall be served upon the ~~person who~~ party that is responsible for the facilities upon which the violation has occurred, if the identity of the ~~person~~ party is known. The notice shall also include the following if applicable:

(1) A statement that the situation must be abated within the period of time prescribed by ~~the administering agency~~ Metro Health, giving the

~~person~~ party responsible for the release the option to initiate cleanup and disposal, provided that no unreasonable delay or damage to the public is the result thereof.

(2) A statement that if the situation is not remedied within the prescribed period of time, ~~the administering agency with jurisdiction~~ Metro Health, MSD, the Fire Chief, or another Metro Governmental agency authorized to do so may proceed to correct the violation.

(3) A statement that the ~~person~~ party shall be liable for ~~any~~ costs occurred by public agencies associated with their releases ~~except for those costs that are associated with a normal emergency response.~~

(4) A statement that after the ~~administering agency~~ has corrected the violation has been corrected, or the release has been remediated, a bill shall be sent charging the ~~person~~ party the amount of costs and expenses incurred by the governmental agency ~~in correcting the violation.~~

(5) A statement that penalties may be levied for violations that have occurred.

(C) Governmental response. ~~In cases where the identity of a person who party that is responsible for facilities upon which a violation has occurred is not known at the time a violation is reported,~~ the Metro Government, or any governmental agency with jurisdiction in ~~Jefferson County~~ Louisville Metro, may take reasonable steps to abate any problem, and may take reasonable steps to clean up the area affected to assure continuing safety of the public and the environment, if a spill, leak or release occurs and:



(a) The identity of the party responsible for the facility upon which such spill, leak or release occurs is unknown at the time of the incident and subsequent remediation by the governmental entity or entities; or

(b) A situation exists that presents an imminent danger to facility employees and/or the general public.

When the identity of the ~~person~~ party responsible for the facility is determined, or, in emergency situations, at a time subsequent to the cleanup of the spill, leak or release, a bill shall be sent to the ~~person~~ party for the costs for correcting the violation, or remediating the release, ~~according to the provisions of subsection 95.10(B).~~

(D) Injunctive relief. ~~The administering agency~~ MSD is empowered to seek injunctive relief for violations of this ordinance should other means prove ineffective and a threat to public health and safety exists.

#### § 95.11 APPEALS AND OVERSEER BOARD.

(A) Purpose. An Appeals and Overseers Board, composed ~~of~~ of representatives of industry, regulatory agencies and the general public, appointed by the Mayor of Louisville Metro Government, shall be established to insure that an appeal is available to those ~~persons~~ parties aggrieved by an action of ~~the administering agency~~ MSD regarding the adequacy of a HMPC Plan; to those ~~persons~~ parties fined or penalized pursuant to this ordinance; and to coordinate and integrate the policies and procedures of the regulating agencies

and ~~person parties~~ related to the HMPC Plan. Any recommendation of the Appeals and Overseers Board shall be advisory only and shall not be binding in any manner whatsoever upon ~~the Board of the Administering Agency~~ MSD.

(B) Appeal. The Board, in hearing an appeal, shall recommend to ~~the administering agency~~ MSD that the agency's action be modified, upheld, or dismissed or that a fine or penalty levied upon a ~~person party~~ for violation of any provision of this ordinance be set aside, modified or left intact. The Board, upon an HMPC Plan appeal, may recommend to ~~the administering agency~~ MSD exemptions or modifications in the content of the HMPC Plan and requirements for reporting hazardous materials releases, provided that such exemption or modification is based on the preventive physical aspects of the facility, including containment structures and automatic monitors, and the recognized and documented good performance of the industry in handling hazardous materials.

(C) Composition. The Board shall be composed of representatives of industry, regulatory agencies and the general public not to exceed nine members. The Mayor of Louisville ~~Metro Government~~ shall appoint nine members, four of whom shall be representatives of regulated industry appointed from a list of at least ten names submitted by Greater Louisville, Inc.; three of whom shall be representatives of regulatory agencies; and two of whom shall be representatives of the general public. A simple majority of the Board shall constitute a quorum. The Appeals and Overseers Board shall function according to bylaws developed by the Board.

#### § 95.12 AFFIRMATIVE DEFENSE.

It shall be an affirmative defense to any enforcement action other than an action for violation of Section ~~95.06~~ 95.05, including the recovery of cleanup costs pursuant to this ordinance if a ~~person~~ party can prove that a release of hazardous materials was caused solely by an act of God, an act of war, negligence on the part of the Metro Government, or an act or omission of a third party, or any combination of the foregoing clauses.

#### § 95.13 FEES.

Fees shall be imposed for HMPC Plan review or approval, the revenues of which shall cover only the costs of HMPC Plan review and approval. ~~The administering agency~~ MSD will set and collect fees. The fee schedule shall be uniform for all administering agencies.

#### § 95.14 DISCLAIMER OF LIABILITY.

This ordinance shall not create liability on the part of ~~the administering agency~~ any Louisville Metro agency, MSD, or suburban fire district for any damages that result from reliance on the ordinance or any administrative decision lawfully made thereunder. All ~~persons~~ parties are advised to determine to their own satisfaction the level of protection, in addition to that required by this ordinance, necessary or desirable to ensure that there is no unauthorized release of hazardous materials.

#### § 95.98 SEVERABILITY.

If any provision of this chapter as now or later amended or its application to any ~~person~~ party or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

#### § 95.99 PENALTY.

(A) Amount exceeding reportable quantity. ~~The person~~ Any party responsible for a hazardous material release in an amount exceeding the reportable quantity may be fined not more than \$1,000, if the release is not an authorized release, and if the release involved willful violations, negligence, or repeated spills under similar conditions and where a significant quantity of hazardous material is involved taking into account real or potential damage to the environment and threat to the public health. Every incident giving rise to such a release shall constitute a separate offense; however, no ~~person~~ party shall be held responsible for more than one violation per day where the violations occur at the same facility and are causally related.

(B) Failure to notify ~~fire communications bureau~~ MetroSafe. ~~The person~~ Any party who fails to notify the ~~Fire Communication Bureau~~ FCB MetroSafe as required by Section ~~95.06~~ 95.05 may be fined not more than \$5,000.

(C) Any provision other than notification. ~~The person~~ Any party who otherwise violates any provision of this ordinance other than Section ~~95.06~~ 95.05, including failure to comply with an HMPC Plan, shall be fined ~~not more than \$100~~

up to \$10,000. Every incident giving rise to such a violation shall constitute a separate offense; however, no ~~person~~ party shall be held responsible for more than one violation per day where the violations occur at the same facility and are causally related.

(D) Administrative fines. Any ~~person~~ party violating any of the provisions of this ordinance shall, subject to the affirmative defenses set forth in Section 95.12, become liable civilly to the Metro Government, political subdivisions thereof, or fire protection districts for any expense, loss, or damage caused to the government, political subdivision, or fire protection districts by reason of such violation, including but not limited to any cleanup, evacuation, administrative or other expenses, and legal expenses.

(E) Violation of MSD Wastewater Discharge regulations. Any ~~person~~ party ~~who~~ that violates any provision of the MSD Wastewater Discharge Regulations, requirements, or conditions set forth in permits duly issued, or ~~who~~ that discharges wastewater which cause pollution, or violates any cease and desist order, prohibition, discharge limitation, natural standard or performance, pretreatment, or toxicity standard may also be ~~liable civilly to liabilities~~ civilly liable for penalties imposed by the Metropolitan Sewer District. The civil liability may be in a sum not to exceed ~~\$10,000~~ \$32,500 for each violation. Each incident giving rise to a violation of these sections shall constitute a separate offense; however, no ~~person~~ party shall be held responsible for more than one violation per day where the violation occurs at the same facility and are causally related.

(F) Penalties imposed pursuant to legislative authority. Any penalties imposed under this section shall be levied by ~~the administering agency with jurisdiction~~ MSD, pursuant to its legislative authority. ~~MSD shall adopt policies with regard to the use of revenues obtained through levy of any fines under the provisions of this ordinance.~~

## APPENDIX A

### 1. ADOPTION BY REFERENCE.

(A) The “Summary of the Hazardous Materials Ordinance and Listing of Hazardous Materials (Appendix A),” and all amendments thereto, attached to Ord. 17-1993, adopted and effective 7-7-1993, are hereby adopted by reference and incorporated into this Code of Ordinances, as if fully set forth herein.

(B) Copies of Appendix A are available for public inspection during normal hours at the office of the ~~City~~ Metro Council Clerk.

**SECTION II.** This Ordinance shall take effect upon its passage and approval.

\_\_\_\_\_  
Kathleen J. Herron  
Metro Council Clerk

\_\_\_\_\_  
Dr. Barbara E. Shanklin  
President of the Council

\_\_\_\_\_  
Jerry E. Abramson  
Mayor

\_\_\_\_\_  
Approval Date

**APPROVED AS TO FORM AND LEGALITY:**

Irv Maze  
Jefferson County Attorney

BY: \_\_\_\_\_

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RESOLUTION No. \_\_\_\_ SERIES 2005

**A RESOLUTION RENAMING THE SOUTH LOUISVILLE  
GOVERNMENT CENTER BUILDING IN HONOR OF  
WILLIAM H. "BILL" WILSON.**

**Sponsored By:** Council Members Julie Raque Adams, Stuart Benson, Ellen Call, Kelly Downard, Robin Engel, Ken Fleming, Cheri Bryant Hamilton, Doug Hawkins, Hal Heiner, Bob Henderson, Dan Johnson, Jim King, Kevin Kramer, George Melton, James Peden, Barbara Shanklin, Glen Stuckel, David Tandy, Leonard Watkins, and Mary Woolridge

**WHEREAS,** William H. "Bill" Wilson dedicated his life as public servant and political leader in the Louisville Community; and

**WHEREAS,** working in the private sector, Bill Wilson distinguished himself as creative director of an advertising and public relations firm; and

**WHEREAS,** during Bill Wilson's tenure, the agency received the prestigious American Federation of Advertising "ADDY Award"; and

**WHEREAS,** Bill Wilson was called to public service as 9th Ward Alderman for fourteen years from 1982 to 1996; and

**WHEREAS,** as Alderman, Bill Wilson served the 9th Ward with dedication and compassion exemplified by his work on various neighborhood improvements in the Park DuValle area, creation of the neighborhood paint program and prescription drug program for the needy; and

**WHEREAS,** Bill Wilson served as Chair of the Louisville Board of Aldermen Appropriations Committee; and

**WHEREAS,** while serving as an Alderman, he further distinguished himself by serving as President of the Board of Aldermen for three consecutive terms; and



**WHEREAS**, though on March 18, 2003 Bill Wilson's life was completed, his memory and spirit lives on through the many lives he touched, including loving wife Sandy; daughters, Michelle, Melanie, Yvette, Toni and Lisa; eight grandchildren; one aunt; and a host of other relatives and friends.

**BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:**

**Section I:** In order to honor the memory of the former President of the Board of Alderman for the City of Louisville, the South Louisville Government Center Building at 2911 Taylor Blvd., Louisville, KY, is hereby named the "William H. 'Bill' Wilson South Louisville Government Center Building."

**Section II:** Henceforward, all signage and other written references produced by and for this building shall state this full name, or any abbreviation thereof, or may be shortened for convenience to the "Wilson Building."

**Section III:** This Resolution shall take effect upon its passage and approval.

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Kathleen J. Herron  
Metro Council Clerk

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Dr. Barbara E. Shanklin  
President of the Council

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Jerry E. Abramson  
Mayor

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Approval Date

**APPROVED AS TO FORM AND LEGALITY:**

Irv Maze  
Jefferson County Attorney

BY: \_\_\_\_\_

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**RESOLUTION NO. \_\_\_\_\_, SERIES 2005**

**A RESOLUTION URGING THE KENTUCKY PUBLIC SERVICE COMMISSION TO RE-EVALUATE LOUISVILLE GAS AND ELECTRIC COMPANY'S (LG&E) REQUEST FOR A NATURAL GAS RATE INCREASE, AND DECLARING THE ENACTMENT OF THIS RESOLUTION AN EMERGENCY.**

**Sponsored By:** Council Members Dan Johnson, Cheri Bryant Hamilton, Leonard Watkins, Barbara Shanklin, Mary Woolridge, David Tandy, George Unseld, Tom Owen, Tina Ward-Pugh, Jim King, Rick Blackwell, Ron Weston, Bob Henderson, George Melton, and Madonna Flood

**WHEREAS,** LG&E has been granted permission by the Kentucky Public Service Commission to increase natural gas rates by 64 percent; and

**WHEREAS,** these rates are now the highest of the major natural gas providers in the state of Kentucky, and exceed the increases allowed to other Kentucky utilities by as much as 30 percent; and

**WHEREAS,** as an example of the effect of this increase, a typical residential customer with average usage of 8000 cubic feet per month (mcf) will pay \$143.96 for monthly energy costs, effective November 1, 2005, compared with a cost of \$87.85 per month, based on the rates for the same quarter one year ago; and

**WHEREAS,** Indiana Utilities which is based in Corydon, Indiana and located less than 30 miles from Louisville, was granted only a 20 percent rate increase by the Indiana Utilities Regulatory Commission; and

**WHEREAS,** Indiana Utilities' average price for 1000 cubic feet (mcf) of natural gas after this 20 percent adjustment has increased to only \$13.55 per mcf; and

**WHEREAS,** LG&E's average price for 1000 cubic feet (mcf) of natural gas after its 64 percent adjustment has increased to \$15.41 per mcf; and

**WHEREAS**, Louisville Metro and Southern Indiana, which is located directly across the Ohio River and part of the Louisville metropolitan area, now have divergent energy costs; and

**WHEREAS**, having the highest natural gas rates in the region could hamper economic development efforts to attract new businesses and jobs to this community; and

**WHEREAS**, the increases approved for most utilities across the country do not approach the 64 percent approved for LG&E; and

**WHEREAS**, that LG&E will return any overcharge to customers in a future year through natural gas-price discounts may be of limited value to people who suffer a decrease in their present day quality of life due to an unjustified excessive rate increase; and

**WHEREAS**, that LG&E will return any overcharge to customers in a future year through natural gas-price discounts will be of no value to people who lose their homes, businesses, or lives due to an unjustified excessive rate increase; and

**WHEREAS**, if the rate increase is determined to be caused, in part, by unwise decision-making on the part of LG&E in the purchase of natural gas and natural gas futures, then the customers of LG&E should not solely bear the burden of excessive increases, but rather that burden should be shared by the company and its stockholders.

**BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:**

**SECTION I:** The Kentucky Public Service Commission is urged to re-evaluate its approval of LG&E's rate increase request, based upon the lower price structure of other Kentucky and Indiana utilities, as well as the record of much smaller increases approved by other regulatory agencies across the country.

**SECTION II:** A copy of this resolution shall be forwarded to the Kentucky Public Service Commission and the Kentucky Attorney General.

**SECTION III:** In recognition of the compelling need to assist with the impending home heating crisis and pursuant to Section 7.12 of the Rules of the Council, the enactment of this Resolution is deemed an emergency.

**SECTION IV:** This Resolution shall take effect upon its passage and approval.

\_\_\_\_\_  
Kathleen J. Herron  
Metro Council Clerk

\_\_\_\_\_  
Dr. Barbara E. Shanklin  
President of the Council

\_\_\_\_\_  
Jerry E. Abramson  
Mayor

\_\_\_\_\_  
Approval Date

**APPROVED AS TO FORM AND LEGALITY:**

Irv Maze  
Jefferson County Attorney

BY: \_\_\_\_\_